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1689
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1719

THE PROCEEDINGS AND TRYAL

IN THE CASE OF

The Most Reverend Father in GOD

WILLIAM

Lord Archbishop of *CANTERBURY*,

1689
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719

And the Right Reverend Fathers in God,

WILLIAM Lord Bishop of St. *Asaph*,
FRANCIS Lord Bishop of *Ely*,
JOHN Lord Bishop of *Chichester*,
THOMAS Lord Bishop of *Bath* and *Wells*,
THOMAS Lord Bishop of *Peterborough*,
And *JONATHAN* Lord Bishop of *Bristol*.

In the Court of *Kings-Bench* at *Westminster*, in *Trinity-Term* in the Fourth Year of the Reign of King *James* the Second, *Annoque Dom.* 1688.

Together with the Learned Arguments of the Honourable Mr. *Finch*, Sir *Francis Pemberton*, Sir *Creswel Levins*, Sir *George Treby*, Sir *Robert Sawyer*, Sir *Henry Pollixfen*, and Mr. *Summers*, against the Dispencing Power, &c.

The Second Edition.

LONDON,
Printed for Thomas Basset, at the *George* in *Fleet-street*, and Thomas For, at the *Angel* in *Westminster-Hall*. 1689.

Price Two Shillings Six Pence.

TO HIS

Moſt Illuſtrious HIGHNESS

WILLIAM HENRY,

Prince of Orange.

May it pleaſe Your Highneſs,

HOW deeply the Deſign was laid, and with what Violence carry'd on by thoſe who lately Steer'd the Helm of this State, for the Subverſion of the Eſtabliſh'd Religion and Government of theſe Three Kingdoms, is already ſufficiently well known to *Your Highneſs*. Among the reſt, one of their Chiefeſt Contrivances was, by a Malicious, and Illegal Proſecution, to have extinguiſh'd the Brighteſt Luminaries of the Engliſh Church; to the end, that the benighted People might the more eaſily, after that, have been miſled into the Pitfals of *Superſtition* and *Slavery*.

But as Heaven began their Diſappointment, in eluding both at once there Subtilty and Malice, by the ſpeedy Deliverance of the Seven *Renowned Sufferers*, from the Jaws of their Oppreſſors; So the utter Diſſolution of their Arbitrary Command, and Domineering Power, under the Conduct of the ſame Providence, was fully Compleated, *Great SIR*, by Your Deliberative Prudence, and Undaunted Courage.

To Your *Illuſtrious Highneſs*, therefore the Oblation of theſe Sheets, containing an exact Account of the Proſecution, and Tryal of thoſe Heroick Prelates, is moſt juſtly due; as being That, wherein *Your Higneſs* may, in part, diſcern the Juſtice of the Cauſe You have ſo Generouſly undertaken; and that it was not without Reaſon, that the Engliſh Nation ſo loudly Implor'd Your timely Aſſiſtance. A clear convincement, that it was not Ambition, nor the deſire of ſpacious Rule; but a Noble, and Ardent Zeal for the moſt Sacred Worſhip of God, which rows'd Your Courage, to reſcue a *Diſtreſſed Land*, whoſe *Religion*, *Laws*, and *Liberties*, were juſt ready to have been overwhelm'd with *French Tyranny*, and *Romiſh Idolatry*.

Therefore, that the Nation may long continue under the Protection of Your Glorious Adminiſtration, is the Prayer of,

Great S I R,

Your Highneſſes moſt Humble,

Moſt Faithful, and moſt Obedient Servants,

Tho. Baſſet.

Tho. Fox.

December

December 13. 1688.

NOT long after the Tryal of his Grace the Lord Archbiſhop of *Canterbury*, and the other Six Biſhops; and while the Paſſages thereof were freſh in my Memory, I peruſed that Copy of this Proceeding, and Tryal, which Mr. *Ince*, their Lordſhips Attorney, had cauſed to be taken for their Uſe: And I have alſo lately read over the ſame again, as intended to be printed by Mr. *Baſſet* and Mr. *Fox*: And I do think it to be a very Exact and True Copy of the ſaid Proceeding and Tryal, according to the beſt of my Judgment, having been very careful in peruſing thereof.

Joh. Powel.

Theſe

These Peers were present, on the 15*th.* Day of *June*, 1688. when the Lords, the Archbishop and Bishops, were brought into Court from the Tower, upon the *Habeas Corpus.*

VIZ.

Lord Marquis of *Hallifax.*
Lord Marquis of *Worcester.*
Earl of *Shrewsbury.*
Earl of *Kent.*
Earl of *Bedford.*
Earl of *Dorset.*
Earl of *Bullingbrook.*
Earl of *Manchester.*
Earl of *Burlington.*
Earl of *Carlisle.*
Earl of *Danby.*
Earl of *Radnor.*
Earl of *Nottingham.*
Lord Viscount *Fauconberge.*
Lord *Grey* of *Ruthyn.*
Lord *Paget.*
Lord *Chandoys.*
Lord *Vaughan Carbery.*

These Peers were present on the Day of the Tryal, being the 29*th.* of *June*, 1688. and the Feast of St. *Peter* and St. *Paul.*

VIZ VIZ VIZ VIZ

Lord Marquis of *Hallifax.*
Lord Marquis of *Worcester.*
Earl of *Shrewsbury.*
Earl of *Kent.*
Earl of *Bedford.*
Earl of *Pembrook.*
Earl of *Dorset.*
Earl of *Bullingbrook.*
Earl of *Manchester.*
Earl of *Rivers.*
Earl of *Stamford.*
Earl of *Carnarvon.*
Earl of *Chesterfield.*
Earl of *Scarsdale.*
Earl of *Clarendon.*
Earl of *Danby.*
Earl of *Sussex.*
Earl of *Radnor.*
Earl of *Nottingham.*
Earl of *Abington.*
Lord Viscount *Fauconberge.*
Lord *Newport.*
Lord *Grey* of *Ruthyn.*
Lord *Paget.*
Lord *Chandoys.*
Lord *Vaughan Carbery.*
Lord *Lumley.*
Lord *Carteret.*
Lord *Offulston.*

'Tis possible more of the Peers might be present both Days, whose Names, by reason of the Croud, could not be taken.

De Termino Sanctæ Trinitatis Anno Regni Jacobi *Secundi Regis, Quarto,* In Banco Regis.

Die Veneris Decimo Quinto Die Junii, 1688.

Dominus Rex verſus Archiep. Cantuar. & al.

Sir *Robert Wright* Lord Chief Juſtice
Mr. Juſtice *Holloway*
Mr. Juſtice *Powell*
Mr. Juſtice *Allybone*
} Judges.

THIS being the firſt day of the Term, His Majeſties Attorney General, (as ſoon as the Court of *Kings Bench* was ſat) moved on the behalf of the King for a *Habeas Corpus*, returnable immediate, directed to the Lieutenant of the Tower, to bring up his Grace the Lord Arch-Biſhop of *Canterbury*, and the Biſhops of St. *Aſaph*, *Ely*, *Chicheſter*, *Bath* and *Wells*, *Peterborough*, and *Briſtol*; which was granted.

And with great diſpatch about eleven a Clock the very ſame day the Lieutenant returned his Writ, and brought the ſaid Lord Arch-Biſhop and Biſhops into Court, where being ſet down in Chairs ſet for that purpoſe, Mr. Attorney-General moved the Court. *Viz.*

Mr. Att. Gen. My Lord, I pray that the Writ and Retorn may be read, by which my Lords the Biſhops are brought hither.

Lo. Ch. Juſt. Read the Retorn.

Clerk reads the Retorn, *which in Engliſh is as follows.* viz.

I Sir Edward Hales Baronet, *Lieutenant of the Tower of* London, *named in the Writ to this Schedule annext, To Our* Moſt Serene Lord the King *do moſt humbly certifie, That before the coming of the ſaid Writ, to wit, the Eighth day of* June, *in the Fourth Year of the Reign of our Lord* James the Second, *King of* England, &c. William Lord Arch-biſhop of Canterbury, William Lord Biſhop of St. Aſaph, Francis Lord Biſhop of Ely, John Lord Biſhop of Chicheſter, Thomas Lord Biſhop of Bath and Wells, Thomas Lord Biſhop of Peterborough, *and* Jonathan Lord Biſhop of Briſtol, *mentioned in the aforeſaid Writ, were committed and delivered to, and are retained in my Cuſtody; by Vertue of a certain Warrant under the Hands and Seals of* George Lord Jeffries, *Baron of* Wem, *Lord High Chancellor of* England, Robert *Earl of* Sunderland, *Lord Preſident of the Privy Council of our Lord the King*, Henry *Lord* Arundel *of* Warder, *Keeper of the Privy Seal of our ſaid Lord the King*; William *Marqueſs of* Powis, John *Earl of* Mulgrave, *Lord Great Chamberlain of* England; Theophilus *Earl of* Huntington, Henry *Earl of* Peterborough, William *Earl of* Craven, Alexander *Earl of* Moray, Charles *Earl of* Middleton, John *Earl of* Melfort, Roger *Earl of* Caſtlemain, Richard *Viſcount* Preſton, George *Lord* Dartmouth, Sidney *Lord* Godolphin, Henry *Lord* Dover, *Sir* John Earnly, *Knight, Chancellor of the Exchequer of our ſaid Lord the King*; *Sir* Edward Herbert, *Knight, Chief Juſtice of the Common Bench of our Lord the King, and Sir* Nicholas Butler, *Knight, Lords of his Majeſties Moſt Honourable Privy Council, to me directed, the Tenor of which Warrant follows in theſe Words*; viz.

" THESE are in his Majesties Name, and by his Command to require you to " take into your Custody the Persons of *William* Lord Arch-bishop of *Canterbu-* " *ry*, *William* Lord Bishop of St. *Asaph*, *Francis* Lord Bishop of *Ely*, *John* Lord Bishop " of *Chichester*, *Thomas* Lord Bishop of *Bath* and *Wells*, *Thomas* Lord Bishop of *Pe-* " *terborough*, and *Jonathan* Lord Bishop of *Bristol*, *For Contriving*, *Making and Publishing a* " *Seditious Libel in Writing against his Majesty and his Government*, and them safely to " keep in your Custody until they shall be delivered by due Course of Law; For " which this shall be your sufficient Warrant. At the Council Chamber in *White-* " *Hall*, this Eighth day of *June*, 1688. And this is the Cause of the taking and " detaining, &c.

Lord Ch. Just. Well, What do you desire, Mr. Attorney?

Mr. Att. Gen. We pray for the King, that the Return may be filed.

L. Ch. Just. Let it be filed.

Mr. Att. Gen. By this Retorn your Lordship observes, what it is my Lords the Bishops were committed to the Tower for; it is by Warrant from the Council Board, where, when their Lordships appeared, they were not pleased to give their Recognizances to appear here, as they were required by the King to do; and thereupon they were committed to the Tower, and now come before the Court upon this Retorn of the King's Writ of *Habeas Corpus*, and by the Retorn it does appear, it was for *Contriving*, *Writing*, *Framing*, and *Publishing* a *Seditious Libell* against His Majesty and the Government; My Lord, it is our Duty, who are the King's Councel, pursuant to our Orders, to prosecute such kind of Offences, and when the proper time shall come for us to open the nature of the Offence, your Lordships will then judge, what reason there is for this Prosecution; but in the mean time, what we are now to offer to your Lordship is, The Officer of this Court has an Information against his Grace the Archbishop of *Canterbury*, and the rest of my Lords the Bishops, which we desire may be read to them, and pray that they may plead to it, according to the Course of the Court.

Sir *Rob. Sawyer.* If it please your Lordship, to spare us a word for my Lords the Bishops.

Mr. Att. Gen. My Lord, We pray for the King the Information may be read.

Sir *Rob. Sawyer.* We desire to be heard a word first.

Mr. Soll. Gen. We oppose your speaking any thing, till the Information hath been read.

Sir *Rob. Sawyer.* But what we have to offer is proper before it be read.

Mr. Att. Gen. Your time is not yet come, Sir *Robert.*

Sir *Rob. Sawyer.* Yes, this is our proper time, for what we have to say, and therefore we move it now, before there be any other proceedings in this matter.

Mr Soll. Gen. It is irregular to move any thing yet, pray let the Information be read first.

Mr. S. Pemberton. If your Lordship please to spare us, we will offer nothing but what is fit for us to do.

Sir *Rob. Sawyer.* And now is our proper time for it.

Mr. Soll. Gen. Gentlemen, You do know the way of Proceeding in such Cases better than so, I am sure, as for you, Sir *Robert Sawyer*, you have often oppos'd any such Motion as irregular, and I hope the Case is not alter'd, however you may be; the course of the Court is the same.

Sir *Rob. Sawyer.* With submission, if your Lordship please to spare me a word, that which I would move, is, to discharge my Lords the Bishops upon this Return, and from their Commitment upon this Warrant.

Mr. Att. Gen. Surely these Gentlemen think to have a Liberty above all other People; here is an Information, which we pray my Lords the Bishops may hear read, and plead to.

Mr. Soll. Gen. Certainly, Sir *Rob. Sawyer*, you would not have done thus half a year ago.

Sir *Rob. Sawyer.* What would not I have done? I move regularly (with Submission) to discharge my Lords the Bishops from their Commitment; If they are not here legally Imprisoned, now they are before your Lordships upon this Writ, then you will give us leave to move for their Discharge, before any thing else be said to them; and that is it we have to say, to demand the Judgment of the Court upon this Return, whether we are legally Imprisoned?

Mr. Att.

Mr. Att. Gen. Under Favour, my Lord, neither the Court, nor they, are ripe for any Motion of this Nature yet.

Mr. S. Pemberton. If we do not move it now, it will afterwards (I fear) be too late.

Mr. Soll. Gen. Theſe Gentlemen are very forward, but certainly they miſtake their time; this is a *Habeas Corpus* that's brought by the King, and not by the Priſoners; and therefore they are too ſoon, till they ſee what the King has to ſay to them.

Mr. Att. Gen. Your Lordſhip cannot as yet be moved for your Judgment about the Legality of this Commitment, becauſe this Writ was granted upon our Motion, who are of Councel for the King, and upon this Writ they are brought here: and what is it we deſire for the King? Certainly nothing but what is Regular; we have here an Information for the King againſt my Lords, and we deſire they may plead to it.

Mr. S. Pemberton. Good my Lord, will you pleaſe to hear us a little to this Matter.

L. C. Juſt. Brother *Pemberton*, we will not refuſe to hear you by no means, when you ſpeak in your proper time, but it is not ſo now; for the King is pleaſed, by his *Attorney* and *Sollicitor*, to Charge theſe Noble Perſons, my Lords the Biſhops, with an Information, and the Kings Councel call to have that Information read, but you will not permit it to be read.

Mr. S. Pemberton. Pray my Lord ſpare us a word: if we are not here as Priſoners regularly before your Lordſhip, and are not brought in by the due Proceſs of the Court, then certainly the Kings Councel, or the Court have no Power to charge us with an Information; therefore we beg that you will hear us to that, in the firſt place, whether we are Legally here before you?

Mr. Soll. Gen. Theſe Gentlemen will have their proper time for ſuch a Motion hereafter.

Mr. Pollexfen. No, *Mr. Soll.* this is, without all Queſtion, our only time for it, we ſhall have no time afterwards.

Mr. Att. Gen. Yes, you will, for what do we who are of Councel for the King now ask of the Court, but that this Information may be read? when that is done, if we move to have my Lords the Biſhops plead, then they may move what they will; but before we make that Motion, they cannot break in upon us with their Motion; and with Submiſſion to your Lordſhip, whether my Lords the Biſhops were duely Committed, is not yet a Queſtion.

Mr. Finch. But it is, and this the fitteſt time for it.

Mr. Soll. Gen. Pray will you hear us quietly what we have to ſay, and then anſwer us with Reaſon, if you can; I think we are in a proper way, but they are not my Lord; for (as I ſaid,) my Lords the Biſhops are brought by the Kings Writ upon our Motion for the King, not upon theirs, and now we have them here before the Court, We for the King would charge them with an Information; which Information, that they and the Court may know what it is they are charged with, we pray it may be read to them by the Clerk; and when it is read, let theſe Gentlemen ſay what they will for them, they ſhall have their time to ſpeak; but certainly they ought not to obſtruct the Kings Proceedings, nor oppoſe the Reading of the Information to theſe noble Lords, who are brought here in Cuſtody into Court, to this very purpoſe, that they may be charged with this Information.

Mr. *S. Pemberton.* But we have ſomewhat to ſay, before you can come to that, Mr. Sollicitor.

Mr. *Soll. Gen.* You ought not to be heard as yet.

M. *S. Pemberton.* Under favour we ought to be heard.

Sir *Rob. Sawyer.* My Lord, Mr. Sollicitor has oppoſed our being heard, but we now deſire he would hear our anſwer to it, and that which we have to ſay, is this, That my Lords the Biſhops are not here Regularly in the Court to be charged with an Information; and if the Law be not with us in this point, as we doubt not to make appear it is, no queſtion but when your Lordſhip has heard what we have to ſay, you will give a Right Rule in it: My Lord, we ſay, that by the Rules of Law, no man ought to be Charged with an Information or Indictment, by the Expreſs Statute of *Edward* the Third, unleſs he come into Court by Legal proceſs; that is a ſtanding Rule, and the practice of this and all other Courts is purſuant to it; Now in this Court you have ſeveral proceſſes that go out of this Court, and he that comes as taken by vertue of a *Capias*, or an Attachment after a Summons, or by *Venire* in the nature of a *Subpœna*; I ſay, he that comes in upon theſe proceſſes, may be Charged with an Information; but where a perſon is in Priſon, Committed

by

by another Juriſdiction, and another Authority, then that of this Court; when the Priſoner is brought here by *Habeas Corpus*, the firſt thing the Court has to do, is to enquire whether he be Legally Committed; to that end the Return is filed, and the party has leave to make his Exceptions to it, as we do in this Caſe. My Lords are brought here upon a *Habeas Corpus*, the Return of which has been read, and now the Return is filed, we are proper to move, that my Lords may be diſcharged; for you now ſee what they are Committed for, it is for a Miſdemeanour in making and publiſhing a Libel, that's the matter for which they are Committed; and it appears by the Return likewiſe, that they who are thus Committed are Peers of the Realm, for ſo my Lords the Biſhops all are, and for a Miſdemeanour they ought not by Law to have been Committed.

L. C. J. You go too far now, Sir *Robert Sawyer*, I would willingly hear you whatſoever you have to ſay; but then it muſt be in its due time.

Mr. *Att. Gen.* This very diſcourſe (indeed I have heard) has paſs'd up and down the Town for Law; We may ſee now whence they had it.

Mr. Sol. Gen. I know it has heretofore been urged by me, but denyed by them who now urge it, and I am glad that they now learn of me to tack about.

L. C. J. Look you Gentlemen, do not fall upon one another, but keep to the matter before you.

Mr. S. Pemberton. So we would, my Lord, if the Kings Councel would let us; Firſt, we ſay, we being brought here upon a Return of a *Habeas Corpus*, there was neither at the time of the Commitment Cauſe to Impriſon us, nor was there by the Warrant any Cauſe to detain us in Priſon; and for that, beſides what has been hinted at, we ſay further, that here it is returned, that we were Committed by ſuch and ſuch Perſons, Lords of the Privy Council; but the Return doth not ſay, that it was done by them, as Lords of the Privy Council, which muſt be in Council; for if it be not in Council, they have not power to make ſuch a Warrant for the Commitment of any Perſon, and that we ſtand upon; here is a Return that is not a good Return of a Legal Commitment, and therefore we pray my Lords may be diſcharged.

Mr. Pollexſen. Pray, my Lord, ſpare me a word, that is the thing we humbly offer to your Lordſhips Conſideration; and under Favour, I think we are proper both as to the Matter, and as to the Time; the Return is now filed before you: if by this Return there appears to have been ſuch a Cauſe to Commit theſe Lords to Priſon, as is Legal, then we acknowledge they may in a Legal Courſe be brought to anſwer for their Offence; but, with Submiſſion, it appears not by any thing that is in this Return, that my Lords the Biſhops were Committed by the Order of the Privy Council. All that is ſaid, is, That they were Committed by my Lord Chancellor, and thoſe other Perſons, named Lords of the Privy Council; which we conceive is not a good Return, for they can do nothing as Lords of the Privy Council, except only as they are in Council, and by Order made in Council, except that do appear, they have no Power to Commit; then take the Caſe to be ſo; here is a man Committed by one that has no Authority to Commit him, and he is brought by *Habeas Corpus* into this Court, what ſhall the Court do with him? Shall they charge him with an Information? No, it does appear that he was never in Cuſtody, but under a Commitment, by thoſe who had no Legal Power to Commit him; and therefore he muſt be diſcharged; and that we pray for my Lords the Biſhops. What the Kings Councel may have to ſay to them afterwards, by way of Information or otherwiſe, they muſt take the Regular Methods of the Law to bring my Lords the Biſhops to anſwer; but as the Caſe ſtands here before you, upon this Return, it does appear, they had no Authority to Commit them, by whoſe Warrant they were Committed; and therefore this Court has nothing to do but to diſcharge them.

Mr. Finch. I beg your Lordſhips leave to ſay one word farther on the ſame ſide, I think with humble Submiſſion, this is the moſt proper time for us to make this Motion, for here is a *Habeas Corpus* Returned, this Return is filed, and then the Kings Councel move to Charge my Lords the Biſhops with an Information, that Motion of theirs (we ſay) is too ſoon, unleſs my Lords are here in Court, I mean Legally in Court; for no man is in Court ſo as to be liable to be charged with an Indictment, or Information, that is not brought into Court by Legal proceſs, or as a priſoner upon a Legal Commitment; then, my Lord, with humble ſubmiſſion, we ſay, that it doth appear by this Return, that my Lords the Biſhops are not here Legally in Court, becauſe this Commitment of theirs was not a Legal Commitment;

ment; and two Objections we have to it, The one is, that the Perſons Committing had no Authority to commit, for the Return ſays, that it was by Vertue of a Warrant under the Hands of ſuch and ſuch, being Lords of the Council, and they (we ſay) have no Authority to do this; The other Objection is, that the Fact for which they were committed, they ought not to have been Impriſoned for: the Fact charged upon them is in the nature of it a bare Miſdemeanour, and for ſuch a Fact it is the Right of my Lords the Biſhops (as Peers of the Realm) that they ought to be ſerved with the uſual Proceſs of *Subpœna*, and not to be committed to priſon. Theſe are the two Objections that we have to this Return, and this is (under favour) the proper time for us to make this Objection, before the Kings Councel can charge my Lords the Biſhops with an Information.

L. Ch. Juſt. What ſay you to it, Mr. Attorney?

Mr. Att. Gen. With ſubmiſſion, my Lord, theſe Gentlemen have out of courſe and prepoſterouſly let themſelves in to this Diſcourſe, and when all is done, we muſt Recurr to that which we moved to your Lordſhip before, to deſire that your Lordſhip would order the Information to be read, and when we call my Lords to plead to the Information, then will be their proper time to make this Objection; for tis a ſtrange thing certainly for men to make Objections before they know what it is that they are charged with; They ſay, the ground of their Motion is, becauſe my Lords the Biſhops are here in Court upon the Return of an *Habeas Corpus*, and therefore they come in upon a Commitment (as they ſay) for that which they ought not to be committed for at all, and we cannot charge them unleſs they be properly in Court. Now for that it is true, if that Commitment of theirs were the only thing that was here before the Court, then the Court would, if that Commitment were Illegal, diſcharge them of that; but when a man is preſent here in Court, brought into Court, let him come how he will, he is not to have any longer time then that Inſtant to appear to, and be charged with the Information; 'Tis true, upon a *Subpœna*, which is in the Nature of a Summons, there a man hath (as it were) an Eſſoyn, and may make his Excuſe, and he ſhall have time; but when he is preſent in Court, either as a Perſon priviledged, as an Officer, or as a Priſoner, he ſhall be charged preſently; and theſe Gentlemen are not to let themſelves into Invectives againſt the Commitment, thereby to keep off their being charged with the Information. Beſides that, it is ſtrange theſe Gentlemen ſhould know the Priviledge of my Lords the Biſhops as Peers, better then all the Lords of the Council, who are moſt of them themſelves Peers, and they that make the Objection ſhould have conſidered, whether theſe Lords that made the Commitment, did not think themſelves concerned in all the Priviledges of Peerage, as well as theſe ſeven Noble Lords?

Sir Rob. Sawyer. Is that an Anſwer to our Objection, Mr. Attorney?

Mr Att. Gen. I ſay, it is a ſtrange Objection, and I anſwer, 'tis out of due time; for this we ſay, that my Lords the Biſhops being now here in Court as Priſoners upon a Commitment, and we deſiring to charge them with an Information, you are not to examine the matter of their Commitment, and therefore I do inſiſt upon it, that the Information ſhould be read, and then you will conſider, whether they are not bound to plead to it.

Mr. Finch. My Lord, I hope Mr. Attorney General will not think *Legal* Objections to be Invectives.

Mr. Att. Gen. Truly I know not what you call *Legal* Objections, I do not think yours are ſo, nor do I think *Legal* Objections are Invectives, but I uſed that Expreſſion, as very proper for what you urged againſt the Commitment.

L. C. J. Nay, Gentlemen, don't quarrel about words.

Mr. Finch. My *Lord*, we would not willingly have Words given us to quarrel at.

Mr. Soll. Gen. My *Lord*, the Queſtion is, whether we are in the right Method of Practice, as to the Courſe of the Court, or they? It may be theſe Gentlemen think to make us angry, and take Advantage of our being in a Paſſion.

Mr. Finch. Mr. Sollicitor, we deſire to have our Objections anſwered.

Mr. Soll. Gen. Nay, if you begin to be angry, Gentlemen, we can be angry too.

L. C. J. I would have neither of you be Angry.

Mr. Soll. Gen. It ſeems they would have an Anſwer to their Objections, but will not ſuffer us to give it; they would firſt examine whether my *Lords* the Biſhops have been duly Committed, that (we ſay) is not to be done by the Court as yet; your *Lordſhip* ſees they are actually in Cuſtody, by a Commitment of the *Lords* of the Council, that appears by the Return before your *Lordſhip*, and for what they were Committed, what do we now pray for the King? Firſt, we move for a *Habeas Corpus*, then that this Information may be read, and all is in Order to bring this Fact, (for which they were Committed) to a Trial; 'tis ſaid upon the Return, they were ſent to the Tower, for Contriving, Writing, and Publiſhing a Seditious *Libel* againſt the Kings Perſon and Government, which (I think) is Crime enough for a man to deſerve to be Committed for; they would have you to diſcharge theſe *Lords* from this Commitment, (the Return, as they ſay, being not *Legal*) before the Information be read: But we think their Motion is Irregular, for here is a Crime charged in the Commitment, and upon that Commitment they are here now as Criminals before your *Lordſhip*; and Mr. Attorney has exhibited an Information for the King, which is in the Nature of a Declaration at the Kings Suit; and that in this Court, which is the Supreme Court now in being for the Trial of Matters of this Nature. We will come to that Queſtion, whether they were legally Committed, when there is a proper time for it; but now we find my *Lords* the Biſhops in Court, upon a Commitment for a great Crime; I repeat it again, It is for Contriving, Writing, and Publiſhing a Seditious *Libel* againſt the Kings Perſon, and againſt the Kings Government; and whether the Kings Counſel ſhall not have leave to make out this Charge by an Information, ſure can be no Queſtion at all in this Court; I hear them mention the Statute of *Edward* the Third. But that is not at all to the purpoſe, That is but what was offered in another Caſe that may be remembred, and offered by way of Plea, and preſſed with a great deal of Earneſtneſs, but Rejected by the Court; and now what could not be receiv'd then by way of *Plea*, theſe Gentlemen would by their Importunity, have you receive by way of *Parole* at the Bar; I ſuppoſe the Deſign is to entertain this great Auditory with an Harangue, and think to perſwade the weak men of the World, (for the wiſe are not to be impoſed upon) that they are in the Right, and we in the wrong; under Favour my *Lord*, we are in the Right for the King, we deſire this Information may be read, and let them plead what by *Law* they can to it, according to the Courſe of the Court; but that which they now urge, is untimely, and out of Courſe.

Sir Rob. Sawyer. My Lord, we offer this to your Lordſhip ——

Mr. Att. Gen. Why Gentlemen, you have been heard before your time already.

Mr. S. Pemberton. Pray, my *Lord*, give us leave to anſwer what the Kings Counſel have objected.

L. C. J. The Kings Counſel have anſwered your Objections, and we muſt not permit Vying and Re-vying upon one another; if you have no more to ſay, but only as to the Matters that have been urged, you have been heard to it on both ſides already.

Mr. S. Pemberton. I would, if you pleaſe, anſwer what has been objected by the Kings Counſel, and ſtate the Caſe aright.

Mr. Juſt. Allybone. Brother *Pemberton*, I do not apprehend that the Objection you make againſt this Commitment has any weight in it. The Objection (as I take it) is this, that theſe Lords were not legally committed, becauſe they were committed (ſays the Return) by ſuch and ſuch *Lords* of the Council particularly named, and it does not ſpecifie them to be united in the Privy Council; now truly, with me that ſeems to have no weight at all; and I will tell you why. If my *Lord Chief Juſtice* do commit any Perſon, and ſet his Name to the Warrant, he does not uſe to add to his Name, *Lord Chief Juſtice*, but he is known to be ſo, without that Addition; and would you have a different Return from the *Lieutenant* of the Tower to a *Habeas Corpus*, than the Warrant it ſelf will juſtifie; the *Lords* do not uſe to write themſelves Privy Counſellors, they are known to be ſo; as well as a Judge, who only writes his Name, and does not uſe to make the addition of his Office.

Sir Rob.

Sir Rob. Sawyer. Pray, my *Lord*, give me leave to be heard to this, I think truly it is a weighty Objection, for, under Favour, we ſay, it muſt upon the Return here appear, that they were legally committed, before you can charge them with an Information; I do not take Exceptions to the Warrant, becauſe it is ſubſcribed by ſuch *Lords*, and they do not write themſelves *Lords* of the Council, they need not do that; and the Return has averred that they are ſo; But the Return ought to have been, that it was by Order of the Privy Council, and ſo it muſt be, if they would ſhew my *Lords* to be legally committed, that they were committed by Order of the Privy Council, and not by ſuch and ſuch particular Perſons, Lords of the Privy Council; ſo in the Caſe put by Mr. *Juſtice Allybone*, of a Commitment by your Lordſhip, or any of the Judges; it muſt be returned to be by ſuch a Warrant, by ſuch a One *Chief Juſtice*, for that ſhews the Authority of the Perſon committing, and then your Lordſhips Name to it indeed is enough, without the Addition; But if it does not appear by the Return that there was ſufficient Authority in the Perſon to *commit*, your Lordſhip cannot take it to be a Legal Commitment; But now in this Caſe, they could have no Authority to *commit* but in Council; and this Return ſeems to make it done by them as particular Perſons, and that's not a good Return (with your Lordſhips favour) upon which theſe Reverend and *Noble Lords* can be detained in Priſon; But what do they on the other ſide ſay to this? Why, we ſhall be heard to it anon: but, my Lord, they very well know, it would be too late for that Effect which we deſire of our Motion, and therefore we lay the Objections before you now in its proper time (ſay we) you ought not to read any Information againſt us, becauſe we are not legally here before the Court; and ſure, that which was ſaid by the Kings Councel, that your Lordſhip may charge any One that you find here in Court, which way ſoever he comes in, cannot be legal.

Mr. Att. Gen. Who ever ſaid ſo?

Sir *Robert Sawyer.* I apprehended you ſaid ſo, Mr. Attorney, or elſe you ſaid nothing.

Mr. *Att. Gen.* Sir *Robert Sawyer*, You of that ſide have a way of letting your ſelves in, to ſay the ſame things over and over again, and of making us to ſay what you pleaſe.

Sir *Rob. Sawyer.* Truly I did apprehend you laid down that for Doctrine, which I thought a very ſtrange One; for we ſay, with your Lordſhips favour, he that is in Court without a *Legal proceſs*, is not in Court ſo as to be charged with an Information.

S. Pemberton. My Lord, It is not the Body being found here that intitles the Court to proceed upon it, but the perſon accuſed is to be brought in by Legal Proceſs: Then if we be not here by Legal Proceſs, the Information cannot be charged upon us; and if we ſuffer it to be read, it will be too late for us to make this Objection.

L. C. J. That you have all ſaid over and over, and they have given it an Anſwer.

Mr. *Att. Gen.* Pray, Mr. Serjeant, will you make an end; you have repeated your Objection over and over, I know not how often, and will never be contented with our Anſwer.

Mr. *J. Allyb.* Sir Rob. *Sawyer*, That which you ſaid in Anſwer to the Caſe I put, methinks does not anſwer it: For if the Return be as good, that it was by a Warrant from ſuch an one, *Lord Chief Juſtice*; as if my *Lord Chief Juſtice* had added the Title of his Office to his own Name, when he ſubſcribed the Warrant: Then this Return, That this was done by ſuch and ſuch Lords of the Council, muſt be as good, as if they had added that to their own Names.

Sir *Rob. Sawyer.* That is not our Objection.

Mr. *Att. Gen.* Your Objection has been heard, and anſwered; we pray the Information may be read.

Mr. *Serj. Pemberton.* No, we are not come to that yet.

Mr. *J. Allyb.* Pray, would you have an *Averment* by the Lieutenant of the *Tower*, in his Return to an *Habeas Corpus*, that it was done by them in the Council-Chamber.

Mr. *Finch.* My Lord, The Difference is this, with Submiſſion; a Commitment by Sir *Rob. Wright*, Ch Juſtice, is a good Commitment, and a Return of that Nature, were a good Return, becauſe he is Chief Juſtice all over *England*, and hath Authority to commit wherever he is; but a Commitment by ſuch an one, or ſuch and ſuch Lords of the Privy-Council, cannot be a good Return of a Commitment; becauſe,

cauſe, though they be Lords of the Council, yet neither ſingle, or apart, nor all together, have Authority to do ſuch an Act, unleſs they be aſſembled in the Privy-Council; there their Authority is circumſcribed; ſo that that muſt needs be a great difference between a Commitment made by a Judge, who is always ſo, and a Commitment by a Lord, or ſo many Lords, by the Name of Lords of the Privy-Council, who carry not their Authority about with them, but are limited to their Aſſembly in Council.

Mr. *J. Allyb.* Mr. *Finch*, Indeed your Objection is worth ſomething, if my Lord Chief Juſtice could not act but as under the character of Chief Juſtice; for you are now arguing, that theſe Lords could not do this Act, but as Lords of the Council, in Council; the ſame (ſay I) may be ſaid of a Commitment by the Lord Chief Juſtice; he cannot do it but under the formality of his Authority, as he is Chief Juſtice, unleſs you will make it impoſſible for him to do any thing, but as Chief Juſtice, or unleſs you make it impoſſible to ſeparate his Perſon from his Authority.

Mr. *Finch.* But, Sir, the difference lies here; the Authority of the one is general and univerſal, and goeth with him wherever he goes; the other's Authority is limited to a particular ſphere

Mr *J. Allyb.* Why, would you have it averred, That they did it being aſſembled in Council?

Mr. *Finch.* Under favour, they cannot juſtifie any thing that was done by them as Lords of the Council, but in the Privy-Council.

Mr. *J. Powel.* Truly, my Lord, for my part, I think there is no ſuch great neceſſity of haſte in this matter; Here are Exceptions taken to this Return; and the matter tranſacted now before us, appears to me to be of very great weight, peradventure a greater, or a weightier, has not been agitated in this place in any Age; it concerns theſe Noble and Reverend Lords, in point of Liberty: it comes ſuddenly upon us, and therefore, my Lord, I think it very fit we ſhould conſider a little of this matter, and conſult the Precedents of Returns, how they are; for there are multitudes of Returns of Writs of *Habeas Corpus* in this Court; therefore it were requiſite, that we did conſult the Forms of other Returns, and how the Precedents, as to this matter, have always been: if they are according as this is, then all is well; but if they be otherwiſe, it is fit we ſhould keep to the uſual Forms.

L. C. J. What's your Opinion of it, Brother *Allybone?*

Mr. *J. Allyb.* I am ſtill of the ſame mind I was, my Lord, That he could make no Return, but this Return he has made; and if his Warrant was inſufficient upon this Account, that theſe particular perſons, Lords of the Privy-Council, did this Act without ſaying, that they did it in Privy-Council, then 'tis not his Return that could mend it; and truly I do not know that there does need any Precedent for this; for every one knows where the Lords of the Council are; and 'tis a ſufficient Averment, this, that is in the Return.

Mr. *Pollexfen.* They are Lords of the Council every where, but they do not act as Lords of the Council any where but in Council.

Mr. *J. Allyb.* So my Lord Chief Juſtice is Chief Juſtice every where.

Mr. *Finch.* And he can do Judicial Acts, as ſuch, every where; but the Lords of the Council cannot act but in the Council.

Mr. *J. Allyb.* Nor is it to be preſumed that they did do it.

Mr. *Finch.* It is not a preſumption that is to make any thing in this caſe, but the Queſtion is, whether here be a legal Return of a legal Commitment?

Mr. *J. Allyb.* Such publick Perſons, in ſuch publick Acts, can never be preſumed to act in their ſeparate private capacities.

Mr. *Finch.* But, with ſubmiſſion, your Lordſhips can judge only what is before you in this Return, whether it be a good Return, and whether here be a good Authority aſſerted in the perſons that did commit my Lords the Biſhops.

L. C. J. Truly, as to this Objection and Exception that has been made by them, I have conſidered of it, and what has been ſaid on all ſides, and I think 'tis the uſual way of Commitment; I never ſaw any other; all the Warrants that ever I ſaw, are of this Form; if there were any Precedents, they ſhould be ſhewn of that ſide.

Sir *Robert Sawyer.* There are multitudes of Precedents otherwiſe, and none of this Form.

L. J. C. I confeſs, 'tis a *Caſe* of great Weight, and the Perſons concerned are of great Honour and Value; and I would be as willing as any body to teſtifie my Reſpects and Regards to my Lords the Biſhops, if I could ſee any thing in it worth conſidering of.

Mr. *Sol. Gen.* There's no colour for it, if they do but look upon the Statute of the 16*th* and 17*th* of the late King, which arraigns the Proceedings of his Privy-Council; that tells you what things belong to the cognizance of the Privy-Council, and what not; and there you have all the Diſtinctions about Commitments by the King and Council, and by the Lords of the Council: And that Act will ſhew, that this is a Commitment according to the uſual Form: They know very well what the common Style of the Orders and Commitments of Council is, as in other places, and other Commitments; By ſuch an one, *Chief Juſtice*, that is the Style that is very well known for ſuch Warrants: So a *Commitment* by ſuch and ſuch, naming them particularly, *Lords of the Council*, that's an Order made by the *Lords in Council*; and that Statute diſtinguiſhes between *Commitments* of one ſort and the other; and it does it, becauſe ſometimes Warrants run in one form, and ſometimes in another; but they all come within the Direction of that Statute. My Lord, we are in a plain *Caſe*, my Lords the Biſhops come Regularly before you, upon a *Commitment* by the *Council*; and therefore we pray they may be charged with this Information.

Sir *Robert Sawyer.* Pray, will your Lordſhip give us leave to have that Statute lookt into, which Mr. *Sollicitor* ſpeaks of; and then we ſhall ſee whether it be to his purpoſe.

L. C. J. Let the Statute be read.

Mr. *Sol. Gen.* If it be *Keeble's* Book, it is the 16*th* of *Charles* the Firſt; if it be the Old Book, it is the 16*th* and 17*th* of *Car.* towards the end.

Clerk reads. **Provided always, and be it enacted, that this Act, and the ſeveral Clauſes therein contained, ſhall be taken and expounded, to extend onely to the Court of** Star-Chamber; **and to the ſaid Court holden before the Preſident and Council in the Marches of** Wales, **and before the Preſident and Council in the Northern parts.**

Mr. Soll. Gen. It is the Paragraph before that.

Clerk reads. **And be it alſo provided and enacted, That if any perſon ſhall hereafter be Committed, Reſtrained of his Liberty, or ſuffer Impriſonment, by the Order and Decree of any ſuch Court of** Star-Chamber, **or other Court aforeſaid, now, or at any time hereafter, having, or pretending to have the ſame, or like Juriſdiction, Power, or Authority to commit, or impriſon, as aforeſaid; or by the Command or Warrant of the King's Majeſty, his Heirs or Succeſſors, in their own Perſons, or by the Command or Warrant of the Council-Board, or of any of the Lords, or others of his Majeſties Privy-Council, that in every ſuch Caſe, every perſon ſo Committed, Reſtrained of his Liberty, or ſuffering Impriſonment, upon demand——**

Mr. Soll. Gen. That is all: Your Lordſhip ſees theſe ſeveral Diſtinctions of the Style of Commitment.

Mr. Att. Gen. Now, pray favour us a little: My Lord, I think theſe Gentlemen will not deny, but that the Lords of the Council can commit; I muſt confeſs, they ask that which was pretty reaſonable, if the *Caſe* was as they would make it; They would have my Lords the Biſhops diſcharged, becauſe there is not a Return of a good *Commitment*, and that ſtands upon this preſumption, that what is here ſaid to be done by all theſe Lords, at the end of whoſe Names this is added, *Lords of the Privy-Council*, was done by them out of Council, which, I ſuppoſe, your Lordſhip will not preſume, but will take it, that they did this as Lords of the Council in Council; And no man can ſay, but the Lords in Council can commit.

Mr. Soll. Gen. You may as well preſume upon a Warrant made by my *Lord Chief Juſtice*, becauſe it is not ſaid where he did it, and therefore he did it in *Scotland.*

Mr. Att. Gen. I ſay again, unleſs your Lordſhip will preſume, that which is not to be preſumed, this muſt needs be a very good Return.

Mr. J. Allyb. Truly (as Mr. Sollicitor ſays) you may as well deſire us to preſume, that my *Lord Chief Juſtice* would commit a man in *Ireland* or *Scotland*; I can ſee no imaginable difference.

Mr. *Finch.* My Lord, That which we pray, is, not that your Lordſhip would preſume, but that you would not preſume, but take the Return as 'tis before you; and then ſee whether it can be thought to be a Commitment by the Lords in Council?

Mr. S. Pemberton. Pray, my Lord, ſpare us a little in this matter: Here has been the Clauſe of a Statute read to you, from whence Mr. Sollicitor would conclude, that all Commitments by ſeveral ſorts of perſons there named, are legal; or elſe the Enumeration of the ſeveral ſorts of Commitments, ſignifies nothing to this purpoſe. But I pray your Lordſhip would conſider this, that the very ſcope and end of that Act of Parliament is, to relieve againſt illegal Commitments and Oppreſſions; then the ſeveral Commitments therein named, can never all be called legal; ſo that that ſignifies nothing to our purpoſe; My Lord, they tell us we ſtand upon Preſumption, no, we do not ſo; we ſay your Lordſhip ought not to preſume the One or the other, but to judge upon what is before you, but here is nothing before you but this Return of a Commitment of theſe Noble Perſons, my Lord the Arch-Biſhop of *Canterbury*, and the reſt of the Biſhops, which is ſaid to be by theſe particular Lords. Now if your Lordſhip will pleaſe to give us time to look into it, (for this is an Exception we take at the Bar upon hearing the Return read) we would ſhew the conſtant way has been quite otherwiſe than this Return makes it; therefore we deſire leave to ſatisfie your Lordſhip concerning the uſual Form of Precedents, and thereby it will appear, that it ought to have been, that they were committed by Order of the Privy Council, and then he ſhould have ſet forth the Warrant it ſelf, which would have ſhewn the Names of the Privy Councellors, and he needed not to have put their Names in the Return as the particular Perſons that committed them; but now, my Lord, this does not appear to be an Order made in Council, as it ought to be, and the Return is that which is before you, and you are to judge only upon what is before you.

L. C. Juſt. So we do.

Mr. *Juſtice Allybone.* Pray, Sir *Robert Sawyer*, would the Saying of a Governour of the Tower in his Return to a Writ of *Habeas Corpus* alter the Nature of the *Commitment*?

Mr. Att. Gen. My Lord, We are in your Lordſhips Judgment.

Mr. *Juſt. Allybone.* I ſay, Brother *Pemberton*, would any collateral Saying of the Lieutenant of the Tower alter the Nature of the thing, his Return in this Caſe is onely an Inducement to the Warrant of Commitment, and his Saying one way or t'other would neither vitiate nor mend the *Commitment.*

Mr Soll. Gen. Your Lordſhip cannot take notice of the Commitment but from the Warrant.

Mr. Pollexfen. The Return is the Fact upon which you are to judge.

Mr. *Juſt. Powel.* Certainly we muſt judge of the Record, and nothing elſe, and the Return is the Record now, being filed.

L. Ch. Juſt. The Return is as certain, I think, as can be.

Mr. Soll. Gen. By the Return it appears, the Biſhops were committed by the Warrant of ſuch and ſuch Lords of the Council, and that which is before you now is, whether you will not intend it to be done by them in Council.

Mr. *Juſt. Powel.* We can intend nothing, but muſt take the Return as 'tis.

Lord Chief Juſt. The Warrant is good enough, I think truly, and ſo is the Return.

Mr. *Pollexfen.* I think in all the *Habeas Corpus*'s that have been ſince the King's return, of Perſons committed by the Council, the Returns have been quite otherwiſe than this Return is; We do all pretty well agree (for ought I can perceive) in theſe two things; We do not deny but the Council Board has Power to commit, they on the other ſide do not affirm, that the Lords of the Council can commit out of Council.

Mr. Att. Gen. Yes, they may, as Juſtices of the Peace.

Mr. Pollexfen. That is not pretended to be ſo here.

L. Ch. Juſt. No, no, that is not the Caſe.

Mr. Pollexfen. Then, my Lord, with ſubmiſſion, I will compare it to any thing elſe of this nature. I deny not but that the Council may commit, but the Queſtion

ſtion is, whether this Return of their Commitment be right; Suppoſe there ſhould be a Return to a *Habeas Corpus*, that ſuch a one was committed by Sir *Robert Wright*, and three others by Name, Juſtices of this Court, for a *Contempt*, without ſaying, that it was done in Court, this would be an ill Return; although they had power in Court to commit for a *Contempt*, yet it muſt appear, that it was done in Court, or it cannot be a good Return: If I had thought or foreſeen that ſuch a Return would have been made, I could eaſily have made out our Objection, but we could not foretell what they would return, and therefore we can only make this Objection now upon the hearing of it read. In all the Debates that have been heretofore in the Great Caſe of the *Habeas Corpus* concerning my Lord *Hollis*, and thoſe other Gentlemen who were in Priſon upon Commitments by the Privy Council, the Returns are, that they were committed by Order of the Privy Council, as near as I can remember; I will not take it upon me to be poſitive in it, but I believe, if your Lordſhips thought fit to give us a ſhort time to look into it, we ſhould be plainly able to ſhew you, that all the Returns of Commitments of this nature, are ſaid to be by Order of the Council-Board, and never any of them naming the Lords, for that may be true, and yet not a Legal Commitment.

Lord Ch. Juſtice. I have ſeen ſeveral Precedents of Commitments in this Form, and if you make no Exception to the Warrant, you can make no Exception to the Return, becauſe that only ſets forth the Warrant.

Mr. *Pollexfen.* The Commitment you are to judge of, is upon the Return, with ſubmiſſion, and ſuppoſing the Warrant to be right and good, yet the Return is not Legal.

Mr. *Attorn. Gen.* We ſay, in common Underſtanding, it cannot be but a Commitment in Council.

Mr. S. Pemberton. But *common Underſtanding* and *legal Underſtanding* are two things, and we pray the Judgment of the Court.

Mr. Soll. Gen. And ſo do we, my Lord, and pray your Rule in it.

Mr. Juſtice Allybone. You may by the ſame reaſon ſay, that upon all Commitments by Warrant from Juſtices of the Peace, that the Commitment was out of the County, if the Party does not alledge in the Warrant or Return, that the Commitment was in the County. 'Tis an Objection that would put us upon preſuming, what we have no reaſon to preſume.

L. Ch. Juſtice. If you would have our Opinions, let my Brothers declare theirs, I will ſoon tell you my mind.

Mr. Juſtice Holloway. Pray let the Return be read again. *(which was done.)*

Mr. Attorn. Gen. So that the Return ſays, they were committed by vertue of a Warrant of ſuch and ſuch by Name, *Lords* of the Council, and whether this be a Warrant of the Council, is the Queſtion, and we think it is plain enough, that 'tis a good Return.

Mr. Juſtice Powell I have given you my thoughts already, I think we ought to conſult Precedents in a Caſe of this Weight and Nature; and truly I will not take upon me to ſay, whether it be a good Return or not a good Return, without looking into Precedents.

Mr. Juſt. Allybone. For my own part, it does not ſtick at all with me, for the Reaſons I gave before; when any man that has an Authority to *commit*, does commit a Perſon to an Inferiour Officer, and that Officer has an *Habeas Corpus* brought to him, it is enough for him to return his Warrant, by which the Party was committed, and whatſoever he ſayes by the bye, cannot have any Influence one way or other, to alter the nature of the thing; Now unleſs you would make every man that is a Juſtice of the Peace write his Name and ſtile himſelf Juſtice of the Peace, this muſt be a good Commitment. Every Commitment ſhall be preſumed to be purſuant to the power of the Perſon *committing*, and I am ſure, take theſe Lords ſeparately, and they had no power *to commit*, and conſequently ſuch a Warrant would be no Authority to the Lieutenant of the Tower to receive them; But when they ſend ſuch a Warrant as this, we ſhall preſume it to be according to the Power they have, and not according to the Power they have not; this Warrant is returned by the Officer, and I cannot but preſume that it is all very well.

Mr. Ju

Mr. Juſtice Holloway. My Lords, I am very deſirous and willing your Lordſhips ſhould have all the Right and Juſtice done you that can be, and by the Grace of God, I will endeavour it all I can: I ſee in this *Caſe* it is agreed on both ſides, that the Council have a power to *commit*, and the Commitment is here certified in the words of the Warrant, and the Lieutenant has made his Return, that they were committed by vertue of this Warrant; If the Lieutenant of the Tower had returned any other Commitment, you would have blamed him for a falſe Return; but now you find fault with his Return, becauſe he does not ſay, the Warrant was made by the Lords of the Council, and in Council; That is a thing ſo notoriouſly known to all the Kingdom, that my Lords were ſent to the Tower by the Council, that no body doubts it; and being thus ſent by this Warrant, I do not ſee but that this is a very good Return, and my Judgment is, that the Information ought to be read.

Lord Ch. Juſt. I told you in the beginning, after you had made your Objections, that I thought it was as all other Returns are, and I am of the ſame Opinion ſtill, I find no fault with the Warrant, nor with the Return.

Mr. *Serj. Pemberton.* There is no Objection to the Warrant at preſent upon this Queſtion.

L. Ch. Juſt. Neither do I take upon me to ſay any thing, nor is there any thing now to be ſpoken of touching the Fact for which theſe Noble Lords were committed.

Mr. Att. Gen. We pray, my Lord, the Information may be read.

Mr. *Juſt. Holloway.* There is no queſtion about the Fact, but whether this be a good Return which is here made, that they were committed by ſuch and ſuch Lords of the Council.

L. Ch. Juſt. I would do as much to give my Lords the Biſhops eaſe, and ſet them at liberty, as I could poſſibly by Law, but we muſt not break the Rules of Law for any one.

Mr. *Soll. Gen.* Pray read the Information.

Mr. *Finch.* No, my Lord, we oppoſe the reading of it.

Mr. *Sollicitor Gen.* Why will not you be ſatisfied with the Opinion of the Court?

Mr. *Finch.* We have another thing to offer, which we muſt have the Opinion of the Court in, before this Information can be Read.

Mr. *Att. Gen.* Pray let us hear it what it is?

Mr. *Finch.* My Lord, we did humbly offer one Objection more to your Lordſhip againſt the reading of the Information, the former objection was concerning the Perſons Committing, in that it does not ſufficiently appear upon the Return, that they were committed by the Lords in Council; the Court have given their opinion in that. But the other objection ſtill remains, whether they ought to have been committed at all, and therefore when they now appear upon this *Habeas Corpus*, we ſay, they were not legally committed to Priſon, becauſe a Peer ought not to be committed to Priſon in the firſt inſtance for Miſdemeanour.

Mr. *Sollicit. Gen.* If you pleaſe you may ſpeak to that by and by, but that is not proper now for you to offer, or for the Court to determine, whether a Peer may be committed upon an Accuſation for a Miſdemeanour?

Mr. *Finch.* With Submiſſion, that is ſuch a difficulty that lyes in the way againſt the reading of the Information, that you muſt get over it, before you can come at the Reading of it.

Mr. *Att. Gen.* You will have your time for all this matter by and by, but certainly, you cannot be admitted to it yet.

L. Ch. Juſt. Truly I think you are too early with that Exception.

Mr. *Finch.* With Submiſſion, we think this is the proper time, and I will tell your Lordſhip the reaſon why.

L. Ch. Juſt.

Ld. *Ch. Juſt.* Mr. *Finch*, certainly every thing in the world, that can be ſaid, you will ſay for your Client, and you ſhall be heard; for we are very willing to deliver theſe Noble Lords, if we can by Law, and if the Exceptions you make be legal.

Mr. *Finch.* My Lord, we do not doubt your Juſtice, and therefore we deſire to offer what we have to ſay in this Point; the only Queſtion (now it ſeems) is about our time of making our Exception. Mr. *Attor.* (we apprehend) did ſay one thing which was certainly a little too large; That however any man comes into Court, if the Court find him here, they may Charge him with an Information.

Mr. *Attor. Gen.* Who ſays ſo? I ſaid no ſuch thing.

Mr. *Finch.* Then I acquit Mr. *Attorney* of it, he did not ſay ſo: Then both he and I agree the Law to be, That a man that does come into Court, if he does not come in by Legal Proceſs, he is not to be Charg'd with an Information; then ſince we do agree in that Propoſition, certainly we muſt be heard to this Point, Whether we are here upon Legal Proceſs, before you can Charge us with this Information?

Mr. *Attor. Gen.* You think you have ſaid a fine thing now, and take upon you an Authority to make me agree to what you pleaſe.

Mr. *Finch.* Certainly the Conſequence is plain upon your own Premiſes.

Mr. *Attor. Gen.* Do you undertake to ſpeak for me?

Mr. *Finch.* I am in the Judgment of the Court, and to them I leave it.

Mr. *Attor. Gen.* I know you thought you had got an extraordinary Advantage, by making me ſay what you pleaſe; but there has been very little ſaid, but what has been grounded upon Miſtakes all along: This is that I do ſay, If a man comes in voluntarily upon any Recognizance, though he be not in Cuſtody; or if he comes in upon any Proceſs, if the Court find him here, though that Proceſs be not for the thing Charged in the Information, yet the Court is ſo much in poſſeſſion of the Perſon, that he ſhall plead to any Information, and That I do ſay, and will ſtand by.

Mr. *Soll. Gen.* My Lord, we are here in a very great Auditory, and this Court is always a very great Court, (but here is a Greater and Nobler Aſſembly, than uſually we have here) and theſe Gentlemen, to ſhew their Eloquence, and Oratory, would, by converting Propoſitions otherwiſe than they are delivered, put another meaning upon them, and ſo draw ſtrange Inferences from them; but theſe Arts we are ſure will not prevail here; we ſay plainly, and we are ſure the Law is ſo, (let them apprehend what they will) That your Lordſhip cannot exhibit an Information to any man that you find accidentally here in Court; then ſays Mr. *Finch*, we are agreed; but withal (ſay I) take my other Propoſition, If a Perſon be brought into Court by Legal Proceſs, or upon any Contempt whatſoever, by an Attachment, or Warrant, or upon a *Habeas Corpus* after a Commitment, being thus found in Court, your Lordſhip may certainly Charge him with an Information; when theſe Gentlemen, who are ſo eager on the otherſide, did preſide here, and ſtood in the places where Mr. *Attorney* and I now are; I can name them abundance of Caſes of the like nature with this, when men have been compelled to appear to Informations, and plead preſently; they are the Perſons that made the Precedents; they made the Law, for ought I know: I'm ſure I find the Court in poſſeſſion of this, as Law, and we pray the uſual Courſe may be followed.

Mr. *Finch.* 'Pray my Lord ſpare us a word in this matter: I do agree with Mr. *Attor.* in this matter, but I do not agree with Mr. *Sollicitor.*

Mr. *Soll. Gen.* You do not agree with your ſelf.

Mr. *Finch.* I hope I do, and always ſhall agree with my ſelf, but I do not agree with you, Mr. *Sollicitor.*

Mr. *Soll. Gen.* You do not in 1688 agree with what you were in 1680.

Mr. *Finch.* Says Mr. *Attorney*, A man that comes voluntarily in, cannot be Charged with an Information; with him I agree. Says Mr. *Sollicitor*, A man that comes in, and is found in Court by any Proceſs, may be Charg'd with an Information: I ſay no, if the Proceſs be wholly illegal, for he cannot be ſaid to be legally in Court: Suppoſe a Peer of the Realm be taken upon a *Capias*, and

is Committed to the *Marſhal'ea*, and is brought up upon a *Habeas Corpus*, I would fain know whether you could declare againſt him.

Mr. *Attor. Gen.* No, we cannot.

Mr. *Finch.* And why is that, but becauſe the Proceſs is Illegal, and he is not truly in Court: Then is it a proper time now, to make this a queſtion, Whether my Lords here were Legally committed, before you can lay any thing to their charge by way of Information; for if the Commitment be Illegal, it is a void Commitment; and if the Commitment be void, the Proceſs is void, and then my Lords are not Legally in Court.

Ld. *Ch. Juſt.* That ſure is but returning again to the ſame queſtion that has been determined already.

Mr. *Soll. Gen.* If your Lordſhip will permit them to go over and over the ſame things, we ſhall never have an end.

Mr. *Finch.* My Lord, we pray theſe Gentlemen of the KINGS Council may be a little cool with us, and then they will find, we do not talk the ſame things over and over again, nor meddle with that which the Court have given their Judgment in. Ld. *Ch. Juſt.* Well, go on Sir.

Mr. *Finch.* My Lord, We ſay, it is the Priviledge of the Peers of *England*, that none of them ſhall be Committed to Priſon for a Miſdemeanour, eſpecially in the firſt inſtance, and before Judgment; this (we ſay) is the right of my Lords, the *Biſhops*, and that which they claim as Lords of *Parliament*. Now it appears upon this Return and the Warrant, that the Council-Table hath Committed them, (for your Lordſhip and the Court hath rul'd it, that this Commitment muſt be taken to be by Order of the Privy-Council, and we meddle not with that further) but we ſay that the Council-Table may Commit a man unjuſtly, that is certain: There has been relief often given in this Court againſt Commitments by the Council-Table: And that they were unjuſtly Committed, depends upon that point of their Priviledge as Peers.

Mr. *Serj. Pemb.* My Lord, we ſay, that the Lords of the Council have Illegally Committed theſe Noble Perſons, who are Peers of the Realm, and ought to have the priviledge of their Peerage, which is not to be Committed for a Miſdemeanour; that the Council ought not to have done: For the Peers of *England* ought no more to be Committed for a Miſdemeanour, and to be Impriſoned, eſpecially upon the firſt Proceſs, than they may be in a caſe of Debt. It is true, in the caſe of Treaſon, Felony, or the Breach of the Peace, the Peers have not ſuch a Priviledge; they may be Committed; but for a bare Miſdemeanour (as this does appear to be in the Warrant of Commitment) they ought not to be Committed; but they were Committed by the Lords of the Council, and we now complain of this to your Lordſhip as Illegal, and therefore pray my Lords may be diſcharged.

Sir *Robert Sawyer.* Will your Lordſhip be pleaſed to favour me a Word on the ſame ſide for my Lords the *Biſhops*. It muſt be agreed to me, that if a Peer be brought into Court, as taken by a *Capias*, he cannot be charged with a *Declaration*; and the reaſon is, becauſe the *Proceſs* is Illegal: Then, my Lord, with ſubmiſſion, When a Peer comes upon a Foreign Commitment, and is brought in Cuſtody upon a *Habeas Corpus*, this is either in the nature of a *Proceſs*, or a final Commitment, as a Judgment; they will not ſay, that this is a good Commitment ſo as to amount to a Judgment; for the Council-Board could not give a Judgment in the caſe; beſides, the Commitment is Illegal becauſe it is not a Commitment till they find ſecurity to anſwer an Information here, but 'tis a Warrant to keep them for a Miſdemeanour; beſides, there is another thing we have to ſay to this Warrant, (for I am making Objections againſt the Validity of this Commitment) it does not appear that there was any Oath made, and therefore the Court muſt adjudge that there was no Oath made, and then no man ought without an Oath to be Committed, much leſs a Peer; but that which we chiefly rely upon, is, That my Lords ought not to have been Committed for this, which is but a Miſdemeanour at moſt: And if they uſe it, as *Proceſs* to bring my Lords the *Biſhops* to anſwer an Information, we ſay, By Law no ſuch *Proceſs* can be taken out againſt the Perſons of Peers for bare miſdemeanours. I do agree, that for Fellony, Treaſon, or Surety of the Peace, the Perſons of Peers may be Committed;

ted; and that which is called Surety of the Peace in our Books, Mr. *Sollicitor* knows very well, in ſome of the Rolls of Parliament, is called Breach of the Peace, but it is all one; and the meaning, in ſhort, is, That it is ſuch a Breach of the Peace, as for which a Man by Law may be obliged to find Sureties for the Peace. If it ſhould mean a Breach of the Peace by implication, as all Treſpaſſes and Miſdemeanours, are ſaid to be *Contra Pacem* in the Indictment or Information, then it were a ſimple thing to enumerate the Caſes wherein Priviledges did not lie; for there could be no Information whatſoever, but muſt be *Contra Pacem*, and ſo there could be no ſuch thing as Priviledge at all: And beſides, we ſay, the very Courſe of this Court is contrary to what they would have; for in the Caſe of a Peer, for a Miſdeameanour, you go firſt by Summons, and then you do not take out a *Capias* as againſt a common Perſon, but the next Proceſs is a *Diſtringas*, and ſo *ad Infinitum*; And I do appeal to them on the other ſide, and Challenge them to ſhew any one Precedent, when a Peer was brought thus into Court, to be charged with an Information, without it were in the Caſe of an apparent Breach of the Peace, for he muſt be Charged in Cuſtody, and there muſt be a *Committitur* to the Marſhal, to intitle the Court to proceed; your Lordſhip will find very few Precedents of Caſes of this Nature about common Perſons, for till within theſe 14 or 15 years there was no ſuch thing ever done againſt a common Perſon; But this was the Rule; firſt there went out a *Subpœna*, and then an Attachment, and when the Party was taken upon the Attachment, he is taken to come in upon Proceſs, and then the Court would Charge him preſently; but if he did appear upon the Summons, they would not Charge him, but he had time to take a Copy of the Information, and an Imparlance of Courſe, till the next Term, before he could be compelled to Plead. But in the Caſe of a Peer, there never was any ſuch Precedent, as the Attaching his Perſon, but only a Summons and Diſtreſs; and I would be glad the KING's Council would ſhew that ever there was any ſuch proceſs taken out againſt the Perſon of a Peer, for a meer Miſdemeanour. My Lord, 'tis plain, what Breach of the Peace means in every Information, and I only ſpeak this to acquaint the Court how the conſtant Proceedings in all theſe caſes have been. Theſe Informations were anciently more frequent in the Star-Chamber; and what was the Proceſs there? Not the common Proceſs of a *Subpœna*, that was not the courſe there; but the Proceſs was a Letter from the Chancellor, that if the Party upon that Letter did not appear, in a Common Caſe, there went out an Attachment; but in a Peers Caſe, never; and ſo it appears by *Cromptons Juriſdiction of Courts. Tit. Star-Chamber* 33. This appears likewiſe by the Proceedings in Chancery againſt the Peers, till the Queens time, they did not ſo much as take out an Attachment after default upon a *Subpœna*, but they would then in the Queens time, be ſo bold as to take out an Attachment againſt a Lord for not appearing; but that Courſe was condemned as illegal; ſo we find in my Lord *Dyer*.

Mr. *Attor. Gen.* That was at a common Perſons Suit.

Sir *Robert Sawyer*. But the proceedings in the Star-Chamber were at the King's Suit, and I am ſure Mr. *Sollicitor* knows that the Peers priviledges reach to Informations, but as I was ſaying, it was ſo adjudged as to the Chancery in my Lord *Cromwel*'s Caſe. *xiiii Eliz. Dyer*, 315.

Ld. *Ch. Juſt*. You take a great compaſs, Sir *Robert Sawyer*, but pray remember what you laid down at firſt, for the Ground of your diſcourſe, That there was never any Commitment of a Peer for a bare Miſdemeanour, you muſt keep to that, that is the Point you are to look after.

Sir *Robert Sawyer*. My Lord I will ſo, I do do not Cite theſe Caſes but for this purpoſe, to ſhew, that in all Courts the Peers have particular Priviledges, and I am ſure they can produce you no Precedents for any ſuch proceedings againſt a Peer; in my experience of theſe matters, I never knew any ſuch; nay, I knew it always to be otherwiſe, That in Informations for Miſdemeanours, there did never iſſue out a *Capias* againſt a Peer; and Mr. *Attorney* knows very well, it was ſo in the late Caſe of my Lord *Lovelace*; for that Caſe of my Lord *Devonſhire*, that was an expreſs Breach of the Peace, tho' it was debated

and

and diſputed then; ſo that I take it, theſe Noble Lords cannot be charged with this Information, becauſe they do not come in by Legal Proceſs; and unleſs they can ſhew me any Caſe, where a Peer did ever come in upon ſuch a Commitment, and anſwered to an Information upon that Commitment, it muſt certainly be allowed not to be the Legal Courſe; though if ſuch a Precedent could be ſhewn, that paſt *ſub Silentio*, without debate or ſolemn determination, that would not do, nor could bind the reſt of the Peers; If one man would loſe a particular Benefit he has, all the whole Body muſt not loſe it; and the benefit is not ſmall, of Time to make his Defence; of Imparling; of taking a Copy of the Indictment, and preparing himſelf to plead as his Caſe will bear; and indeed a common perſon has uſed to have theſe priviledges, tho in ſome Caſes of late, they have taken the other Courſe; and if a *Capias* went out (which We ſay, cannot go againſt a Lord) and the Party were brought in, he was to anſwer immediately: Now, my Lord, I take it, That the Priviledges of Peers is in all times the ſame with the Parliamentary Priviledge in Parliament time, which reacheth to Informations, as well as other Actions. (My Lord *Cooke* is expreſs in this point) in the 4 *Inſtit.* 25. If that Objection ſhould hold good, that every Information being *Contra Pacem*, that ſhould be a Breach of the Peace, then (as I ſaid before) priviledge will hold in no Information, which is contrary to that and all our other Books; 'tis only ſuch a Breach of the Peace, as for which ſecurity of the Peace may be required. But further, that this is a Priviledge enjoyed by the Peers Spiritual as well as Temporal, I ſuppoſe will not be denied, for I think they will not queſtion, but that the Biſhops, and Abbots that were Lords of Parliament were Peers, and we find in our Books when the Court has been moved for a *Capias* againſt an Abbot, if he were a Mitred Abbot, and ſat in the Lords Houſe, it was always ſaid, that no ſuch *Proceſs* ought to go, and ſo it is in the caſe of *Biſhops*; but indeed for other Noble Men, the difference is this, Where it does not appear upon Record, that they are Lords of Parliament, there the Courts have put them to bring their Writs of priviledge, but where it does appear upon Record, that they are Peers, the Court is to allow and take notice of their priviledge, and there needs no ſuch Writ. Now that the Parliament priviledge, and the priviledge of Peers (as to their perſons) is the ſame, appears by the form of the Writ in the *Regiſter fol.* 287. *Fitz. Herb. Nat. Brev.* 247. The Words of the Writ are theſe, That if ſuch a one be Sued at the Suit of another, the Writ commands, that a Peer out of Parliament time ſhould have the ſame priviledge with thoſe ſummoned by the KING to the Parliament; and I know not any difference that can be put between them, and it cannot be denied, that all Informations whatſoever, unleſs ſuch as are for Breaches of the Peace, for which Surety of the Peace may be required, are under the Controul of the Parliament priviledge; ſo that upon theſe grounds, I do preſs that my Lords the *Biſhops* may be diſcharged: If there be any Information againſt us, we are ready to enter our Appearance to anſwer it according to the courſe of the Court; but if the Information be for no other thing than what is contained in the Warrant of Commitment, then their perſons ought to be priviledged from Commitment.

Mr. *Pollixfen.* If your Lordſhip pleaſe to take it all together, you will find it a caſe very well worth your conſideration, it being the caſe of all the Peerage of *England.*

Mr. *Attor. Gen.* My Lord, theſe Gentlemen have taken a great deal of Liberty, and ſpent much of your time in making long Arguments, and after all, truly I do not know where to have them, nor can underſtand what they would be at; it ſeems they agree that for Treaſon, Felony, and Breach of the Peace, a Peer may be Committed.

Ld. *Ch. Juſt.* That is (ſay they) ſuch a Breach of the Peace, as for which Surety of the Peace may be required.

Mr. *Attor. Gen.* Then all the Learning they have been pleaſed to favour us with, is at an end, for if here be any thing charged upon the *Biſhops*, for which Sureties of the Peace may be required, then this is a good Commitment.

Ld. *Ch. Juſt.* That they muſt agree upon their own Arguments.

Mr.

Mr. *Attor. Gen.* Can then any man in the world ſay, that a Libel does not require Sureties of the Peace? for we muſt now take it as it is here upon this Return. How my Lords the Biſhops will clear themſelves of it, is a Queſtion for another time; but the Warrant ſays they were Commited for Contriving, Framing, and Publiſhing a Seditious Libel againſt His *Majeſty*, and His Government; Is there a greater Miſdemeanour? Or is there any thing on this ſide a Capital Crime that is a greater Offence? Is there any thing that does ſo tread upon the Heels of a Capital Offence, and comes ſo near the greateſt of Crimes that can be Committed againſt the Government? Not to enlarge at this time upon what the Conſequences of ſuch things may be, Is there a greater Breach of the Peace than ſuch Seditious Practices? No doubt, any man may be Committed for it, and may be bound to find ſureties for his good Behaviour.

Sir *Robert Sawyer.* I ſay Sureties of the Peace, not of the good Behaviour.

Mr. *Soll. Gen.* Pray my Lord, would you conſider where we are, we are going towards *France*, I think, or ſome farther Country; they have ſet us out to Sea, and I do not ſee after this rate, when we ſhall come to Land; certainly, theſe Gentlemen are mightily out of the way, and would fain have us ſo too; we are here upon a ſingle Queſtion, as this Caſe ſtands before your Lordſhip, upon the Return; here is a Libel, a Seditious Libel, ſaid to be contrived, made and publiſhed againſt the KING and His Government, by theſe Noble Lords the Priſoners; this is the Accuſation; ſuppoſe this be true, (that is to be proved hereafter) (I hope they are innocent, and will prove themſelves ſo) but ſuppoſe it to be true, that they have made a ſeditious Libel againſt the *King* and His Government, will any man ſay, that this is not done *Vi & Armis?* This is a Libel with a witneſs; nay, two or three degrees more may carry it to High Treaſon, and all the Informations that were exhibited by Sir *Robert Sawyer*, when he was *Attorney General*, (and he exhibited a great many for Libels) conſtantly theſe Words were in *Vi & Armis, & contra Pacem.*

Biſhop of Peterborough. Was it ſo in your own Caſe Mr. *Sollicitor?*

Mr. *Soll. Gen.* Yes, it was ſo in my Caſe, and you were one of them that proſecuted me, for ought I know; or if you did not proſecute me you preached againſt me; or if you did not, ſome of your Tribe did: But ſo, my Lord, it was in many other Caſes, within time of Memory. Sir *Robert Sawyer* has paſt a Complement upon me, of my great Skill in Parliament matters; but truly there needs no great Skill in matters where the Law is ſo plain; a Peer they agree may be in Priſon for Treaſon, Felony, or Breach of the Peace; but that Breach of the Peace (ſay they) is where the Law requires Sureties of the Peace; but is there any Certainty where Sureties of the Peace ſhall be required, and where not? Then I would put this Caſe, Theſe Lords have contrived and publiſhed a Seditious Libel againſt the *King* and His Government; and whether this be not ſuch a Breach of the Peace, as will require Sureties of the peace, is the Queſtion before you: And it plainly appears to be ſo, in Sir *Baptiſt Hick*'s Caſe, in *Hobbart*. If a man write a private Letter, provoking another to fight, although there be no fighting, this is a Breach of the peace; now a Letter can do no Wrong in that kind, but as it incites and ſtirs up to fighting, which may occaſion Blood-ſhed, and I think there cannot be a greater Breach of the peace, than for a man to come to the *King*'s Face, and publiſh a Libel againſt Him, and yet according to their Doctrine, this man ſhall go away, and you ſhall not take him up, but take a *Subpœna* againſt him, and wait for the delay of all the ordinary proceſs; and they tell you another thing, that a *Capias* does not lie upon an Information againſt the perſon of a Peer, and that there is no precedent of any ſuch thing, but I would pray them to remember the Caſe of my Lord *Lovelace*, about ſome three years ago for breaking a Foot-mans Head. It ſeems, if a man libels the *King* in His own preſence, that is not ſo great a matter, as a little Correction to an inſolent Foot-man; but there he was bound in a Recognizance to appear here in this Court, and accordingly he did appear, and was Charged with an information, and as to

that precedent I do believe Sir *Robert Sawyer* and Mr. *Finch* won't contradict me; this was in the first year of this *King*: There was likewise my Lord of *Pembrooke*'s Case, who went to a disorderly House, and there frighted some people, and we moved the Court, and had an Attachment against him, for a misdemeanour, and he was glad to Compound the thing, or it had not ended so soon as it did; and yet if a Lord comes to the *King*'s Person, and affronts Him to his very Face, will not an Attachment lie against him for it? Certainly it will. My Lord, we have gone out of the way too much already, and these Gentlemen will lead us farther, but we hope your Lordships will reduce us to the methods of the Law: Here is an Information which we desire may be read, if they have any thing to plead to it, their time for that will come after it is read; if they think they have been illegally imprison'd, it appears plainly upon this Return, who they were that did Commit them; here are a great many Noble Lords to Answer an Action of false imprisonment, if these Lords think fit, and may have these Learned Gentlemen, that are very well able to advise them what they should do in it.

Sir *Robert Sawyer*. We pray your Lordships Judgment, whether the Cases put by Mr. *Sollicitor* are like our Case.

Mr. *Soll. Gen.* They are as like, as Sir *Robert Sawyer* is to Mr. *Attorney* that was.

Sir *Robert Sawyer*. Those Cases are of apparent Breaches of the peace, so likewise was my Lord of *Devonshire*'s Case, but certainly that was not at all like this.

Mr. *Finch*. With your Lordships Favour I would add but one Word, and I would repeat nothing of what has been said; all that I shall say is this, There is a great deal of Differenee between an Actual Breach of the Peace, and that which in the bare Form of an Information is a Breach of the Peace, by Construction of Law, it being *contra pacem*: Suppose it be laid that a man did *vi & armis* speak Words, will that make the Words a Breach of the peace?

Mr. *Soll. Gen.* It must be *vi & armis*, and certainly is a Breach of the peace.

Mr. *Finch*. If a man write a Petition, are the pen and ink that he uses, the Arms?

Mr. *Soll. Gen.* My Lord, I hope Mr. *Finch* remembers what I heard him say in *Algernoon Sidney*'s Case, *scribere est agere*.

Mr. *Finch*. I think it is so, Mr. *Sollicitor*, but every Action is not a Breach of the peace.

Ld. *Ch. Just*. We let my Brothers deliver their Opinions, I will give you mine.

Mr. *Just. Allyb*. The single Question now is, Whether or no that which Mr. *Sollicitor* was pleased to name as the Crime, and lay it to the Charge of my Lords the Bishops, that is a seditious Libel, be a Breach of the peace: I do confess that there is little of Argument to be drawn from Forms of Indictments; and I shall put no great stress upon the words *vi & armis*, where the Fact will not come near it, but if a Commitment may ensue, (as they seem to agree) wherever surety of the peace may be required, nothing seems more important to me, than that surety of the peace should be required, where there is any thing of Sedition in the Case; and wherever there is a Seditious Act, I cannot tell how to make any other Construction of it, but that it is an Actual Breach of the peace, that is my Opinion.

Mr. *Just. Powell*. I am of the same opinion in this point too, as I was in the other point before, It was a matter of great consequence (I thought) upon the former point, but now it appears to me, to be of far greater consequence than it did at first; for here, all the Great, High, and Noble Peers of *England* are concerned in it, as to their priviledge. Our Predecessors in this Court heretofore would not determine the priviledges of the Peers, but left them to themselves to make what Judgment they pleased of them: I think truly 'tis a thing of that weight, that it may be very fit for the Court to take time to consider of it, and I declare for my own part, I will not take upon me to deliver any Opinion in a matter of this Consequence, before I have Consulted all the Books, that can give me any Light in the Case.

Mr. *Just.*

Mr. *Juſt. Allybone.* Brother *Powell*, I am not determining, limitting, or cramping the priviledge of Peers, but I am only conſidering whether or no a ſeditious Libel be a breach of the Peace; 'Tis agreed to be on all hands a breach of the Peace. Is there any thing that will require Sureties of the Peace to be given upon the doing of it? For there Sir *Robert Sawyer* has laid the Foundation of his diſtinction, and if that ſhall draw any perſon under a Commitment, then, ſay I, in my Judgment, wherever there is a ſeditious Libel, there is that which is an actual breach of the Peace; for I am ſure, there is that, which is ſufficient to require Sureties of the Peace; I controvert not the right of the Peers one way or other, but only declare my opinion, That this is a fact that comes within the Rule laid down by them, That what will require Sureties of the Peace, is a breach of the Peace.

Mr. *Juſt. Holloway.* God forbid that in a Caſe of this Nature, any one ſhould take upon him here to ſay, that every Miſdemeanour were a breach of the Peace, I ſay not ſo; but certainly there are ſome ſuch Miſdemeanours as are breaches of the Peace; and if here be ſuch a Miſdemeanour before us, then it is acknowledged that even in Parliament time, a priviledged perſon might be Committed for it: For in Treaſon, Felony, and breach of the Peace, priviledge does not hold. I will not take upon me (as my Brother ſaid) to determine concerning the priviledge of the Peers; it is not of our Cognizance, nor have we any thing to do, either to enlarge or confine priviledge,, nor do we determine whether this be ſuch a Libel as is charged in the Information, that will come in queſtion another time, but certainly as this Caſe is, the Information ought to be read, and my Lords ought to appear and plead to it.

Ld. *Ch. Juſt.* Certainly we are all of us here as tender of the priviledges of Peers, as any in the World can be, and as tender as we would be, and ought to be in trying any man's right; it becomes us to do it with great reſpect and regard to my Lords the *Biſhops*; and therefore I would be as careful (if that were the queſtion before me) to conſider very well, before I give my opinion, as ever I was in my life. But when I ſee there can come no miſchief at all to the priviledges of the Peers, by what is agreed on all hands; I think I may very juſtly give my opinion; for here is the queſtion, Whether the fact charged in the Warrant, be ſuch a Miſdemeanour as is a breach of the Peace, and the words of the Warrant (which is now upon the Record) being ſuch as have been recited, I cannot but think it is ſuch a Miſdemeanour as would have required Sureties of the Peace, and if Sureties were not given, a Commitment might follow; and therefore I think the Information muſt be read.

Mr. *Attor. Gen.* We pray the *Clerk* may read it.

Clerk reads. Middleſex ff. Memorand. That Sir *Thomas Powys*, Knight, *Attorney General* of our Lord the KING, who for our ſaid Lord the KING, in this behalf Sues, comes in his own perſon here into the Court of our ſaid Lord the KING, before the KING Himſelf at *Weſtminſter*, on *Friday* next, after the morrow of the *Holy Trinity* in this Term, and for our ſaid Lord the KING, gives the Court here to underſtand, and be informed, that our ſaid Sovereign Lord the KING out of His Signal Clemency———

Mr. *Soll. Gen.* Read it as it is in *Latin.*

Biſh. of Peterborough. My Lord, We deſire it may be read in *Engliſh*, for we don't underſtand *Law-Latin.*

Mr. *Soll. Gen.* No, my Lords the *Biſhops* are very learned Men (we all know) pray read it in *Latin.*

Clerk reads. Memorandum, *Quod* Thomas Powys, *Miles*, *Attornatus Domini Regis nunc Generalis, qui pro eodem Domino Rege in hac parte ſequitur, in propria*

prin Persona sua venit hic in Curia dict' Domini Regis coram ipso Rege apud Westmonasterium, *Die* Veneris *proxime post crastinum* Sanctæ Trinitatis, *isto eodem Termino, & pro eodem Domino Rege. Dat Curiæ hic intelligi & informari, quod dictus Dominus Rex, nunc ex insigni Clementia & benigna Intentione suis erga Subditos suos Regni sui* Angliæ, *per Regiam suam Prærogativam, quarto Die* Aprilis, *Anno Regni Dict' Domini Regis nunc Tertio, apud* Westmonasterium *in Comitatu* Middlesexiæ, *Declarationem suam Intitulatam,* His Majesties Gracious Declaration to all His Loving Subjects for Liberty of Conscience, *gerentem Datum eisdem Die & Anno, Magno Sigillo suo Angliæ Sigillatim publicavit; in qua quidem Declaratione continetur,*

JAMES R.

IT having pleased Almighty GOD, not only to bring Us to the Imperial Crowns of these Kingdoms through the greatest difficulties, but to preserve Us by a more than ordinary Providence upon the Throne of Our Royal Ancestors. There is nothing now that We so earnestly desire as to Establish Our Government on such a Foundation as may make Our Subjects happy, and Unite them to Us, by Inclination as well as Duty, which We think can be done by no means so effectually, as by Granting to them the Free Exercise of their Religion for the time to come, and add that to the perfect enjoyment of their property; which has never been in any case invaded by Us since Our coming to the Crown, which being the two things men value most, shall ever be preserved in these Kingdoms during Our Reign over them, as the truest methods of their Peace, and Our Glory. We cannot but heartily wish, as it will easily be believed, that all the People of Our Dominions were Members of the *Catholick* Church, yet We humbly thank Almighty GOD, it is, and hath of long time been Our constant Sense and Opinion (which upon diverse occasions We have declared) that Conscience ought not to be constrained, nor People forced in matters of meer Religion. It has ever been directly contrary to Our Inclination, as We think it is to the Interest of Government which it destroys, by spoiling Trade, depopulating Countries, and discouraging Strangers; and finally, that it never obtained the end for which it was imployed. And in this We are the more Confirmed by the Reflections We have made upon the conduct of the four last Reigns. For after all the frequent and pressing endeavours that were used in each of them, to reduce this Kingdom to an exact Conformity in Religion, it is visible, the success has not answered the design: And that the difficulty is invincible. We therefore, out of Our Princely Care and Affection unto all Our Loving Subjects, that they may live at ease and quiet, and for the increase of Trade, and encouragement of Strangers, have thought fit by Virtue of Our Royal Prerogative, to issue forth this Our Declaration of Indulgence, making no doubt of the Concurrence of Our two Houses of Parliament, when we shall think it convenient for them to meet. In the first place we do Declare, that We will Protect and Maintain Our Arch-bishops, Bishops, and Clergy, and all other Our Subjects of the Church of *England*, in the Free Exercise of their Religion as by Law Established, and in the quiet and full enjoyment of all their possessions without any molestation or disturbance whatsoever. We do likewise Declare, that it is Our Royal Will and Pleasure, that from henceforth the execution of all and all manner of *Penal-Laws* in matters Ecclesiastical, for not coming to Church, or not receiving the Sacrament, or for any other Non-conformity to the Religion Established, or for or by reason of the Exercise of Religion in any manner whatsoever, be immediately Suspended, and the further Execution of the said *Penal-Laws* and every of them is hereby Suspended. And to the end, that by the Liberty hereby granted the Peace and Security of Our Government in the practice thereof, may not be endangered, We have thought fit, and do hereby streightly Charge and Command all Our Loving Subjects, that as We do freely give them leave to meet and serve God

God after their own way and manner, be it in Private Houſes, or places purpoſely hired or built for that uſe, ſo that they take eſpecial care that nothing be preach'd or taught amongſt them which may any ways tend to alienate the Hearts of Our People from Us or Our Government, and that their Meetings and Aſſemblies be Peaceably, Openly, and Publickly held, and all Perſons freely admitted to them; and that they do ſignifie and make known to ſome one or more of the next Juſtices of the Peace, what place or places they ſet apart for thoſe uſes: And that all Our Subjects may enjoy ſuch their Religious Aſſemblies with greater Aſſurance and Protection, We have thought it requiſite, and do hereby Command, that no diſturbance of any kind be made or given unto them, under pain of Our Diſpleaſure, and to be further proceeded againſt with the uttermoſt ſeverity. And foraſmuch as We are deſirous to have the benefit of the Service of all our loving Subjects, which by the Law of Nature is inſeparably annexed to, and inherent in Our Royal Perſon, and that none of Our Subjects may for the future be under any diſcouragement or diſability (who are otherwiſe well inclined and fit to ſerve Us) by reaſon of ſome Oaths or Teſts that have been uſually adminiſtred on ſuch Occaſions, We do hereby further Declare, That it is Our Royal Will and Pleaſure, that the Oaths commonly called the Oaths of Supremacy and Allegiance, and alſo the ſeveral Teſts and Declarations mentioned in the Acts of Parliament made in the 25*th.* and 30*th.* years of the Reign of Our late Royal Brother King *Charles* the Second, ſhall not at any time hereafter be required to be taken, declared, or ſubſcribed by any Perſon or Perſons whatſoever, who is or ſhall be employed in any Office or Place of Truſt, either Civil or Military, under Us, or in Our Government. And We do further Declare it to be our Pleaſure and Intention from time to time hereafter to grant Our Royal Diſpenſations under Our Great Seal to all Our loving Subjects ſo to be employed, who ſhall not take the ſaid Oaths, or Subſcribe or Declare the ſaid Teſts or Declarations in the above-mentioned Acts, and every of them. And to the end that all our Loving Subjects may receive and enjoy the full benefit and advantage of Our Gracious Indulgence hereby intended, and may be acquitted and diſcharged from all Pains, Penalties, Forfeitures, and Diſabilities by them or any of them incurred or forfeited, or which they ſhall or may at any time hereafter be liable to, for or by reaſon of their Non-conformity, or the Exerciſe of their Religion, and from all Suits, Troubles, or Diſturbances for the ſame, We do hereby give Our free and ample Pardon unto all Non-conformiſts, Recuſants, and other our Loving Subjects for all Crimes and Things by them committed or done contrary to the Penal Laws formerly made relating to Religion, and the Profeſſion or Exerciſe thereof, hereby declaring that this Our Royal Pardon and Indemnity ſhall be as good and effectual to all intents and purpoſes, as if every individual Perſon had been therein particularly named, or had particular Pardons under Our Great Seal, which We do likewiſe Declare ſhall from time to time be granted unto any Perſon or Perſons deſiring the ſame, willing and requiring Our Judges, Juſtices, and other Officers, to take notice of and obey Our Royal Will and Pleaſure herein before Declared. And although the Freedom and Aſſurance We have hereby given in relation to Religion and Property, might be ſufficient to remove from the Minds of Our Loving Subjects all Fears and Jealouſies in relation to either; Yet We have thought fit further to Declare, That We will maintain them in all their Properties and Poſſeſſions, as well of Church and Abby-Lands, as in any other their Lands and Property whatſoever.

Et idem Attornatus dicti Domini Regis nunc Generalis pro eodem Domino Rege ulterius dat Curiæ hic intelligi & informari, quod poſtea ſcilicet viceſimo ſeptimo die Aprilis Anno Regni dicti Domini Regis nunc, &c. quarto, apud Weſtmonaſterium prædictum in Comitatu Middleſexiæ prædicto, idem Dominus Rex nunc ex eadem Clementia & benigna intentione ſuis erga ſubditos ſuos Regni ſui Angliæ, per Regiam ſuam Prærogativam, aliam Regalem ſuam Declarationem Intitulatam, His Majeſties Gracious Declaration,

gerentem datum eiſdem die & anno ultimo mentionatis, magno ſigillo ſuo Angliæ ſimiliter ſigillatam, publicavit ; in quâ quidem Declaratione continetur,

JAMES REX.

"OUR Conduct has been ſuch in all times, as ought to have perſwaded the "World, that we are firm and conſtant to our Reſolutions; yet that eaſie "People may not be abuſed by the Malice of crafty wicked Men, We think fit "to declare, that Our Intentions are not changed ſince the 4*th.* of *April* 1687. "when we iſſued out Our Declaration for Liberty of Conſcience, in the follow-"ing Terms ——

His Majeſties Gracious Declaration to all his loving Subjects for Liberty of Conſcience.

JAMES REX.

IT having pleaſed Almighty God not only to bring Us to the Imperial Crown of theſe Kingdoms, thro' the greateſt difficulties, but to preſerve Us by a more than ordinary Providence, upon the Throne of Our Royal Anceſtors; There is nothing now that We ſo earneſtly deſire, as to eſtabliſh Our Government on ſuch a Foundation as may make Our Subjects happy, and unite them to Us by Inclination, as well as Duty; which We think can be done by no means ſo effectually, as by granting to them the free Exerciſe of their Religion for the time to come, and add that to the perfect Enjoyment of their Property, which has never been in any caſe invaded by Us ſince Our coming to the Crown; which being the two things Men value moſt, ſhall ever be preſerved in theſe Kingdoms, during our Reign over them, as the trueſt methods of their Peace and Our Glory. We cannot but heartily wiſh, as it will eaſily be believed, that all the People of Our Dominions were Members of the Catholick Church; yet we humbly thank Almighty God, it is, and hath of long time been Our conſtant Senſe and Opinion (which upon divers occaſions we have declared) That Conſcience ought not to be conſtrained, nor People forced in matters of meer Religion. It hath ever been directly contrary to Our Inclinations, as We think it is to the Intereſt of Government, which it deſtroys, by ſpoiling Trade, depopulating Countries, and diſcouraging Strangers, and finally, that it never obtained the End for which it was employed. And in this we are the more confirmed by the Reflections we have made upon the Conduct of the four laſt Reigns: For after all the frequent and preſſing Endeavours that were uſed in each of them, to reduce this Kingdom to an exact Conformity in Religion, it is viſible the Succeſs has not anſwered the Deſign, and that the difficulty is invincible: We therefore out of Our Princely Care and Affection unto all Our loving Subjects, that they may live at eaſe and quiet, and for the Increaſe of Trade, and Encouragment of Strangers, have thought fit by Vertue of Our Royal Prerogative to iſſue forth this Our Declaration of Indulgence, making no doubt of the concurrence of Our two Houſes of Parliament, when We ſhall think it convenient for them to meet. In the firſt place, We do declare, That We will protect and maintain Our Archbiſhops, Biſhops, and Clergy, and all other Our Subjects of the Church of *England*, in the free Exerciſe of their Religion as by Law eſtabliſhed, and in the quiet and full Enjoyment of all their Poſſeſſions, without any moleſtation or diſturbance whatſoever. We do likewiſe declare, That it is Our Royal Will and Pleaſure, that from henceforth the Execution of all, and all manner of Penal Laws in Matters Eccleſiaſtical, for not coming to Church, or not receiving the Sacrament, or for any other Nonconformity to the Religion eſtabliſhed; or for or by reaſon of the Exerciſe of Religion in any manner whatſoever, be immediately ſuſpended, and the further Execution of the ſaid Penal Laws, and every of them, is hereby ſuſpended. And to the end that by the Liberty hereby granted, the Peace and Security of Our Government in the Practice thereof may not be endangered, We have thought fit, and do hereby ſtraitly charge and command all Our loving Subjects, that as we do freely give them leave to meet and ſerve God after their own way and manner, be it in private Houſes, or Places purpoſely hired or built for that uſe, ſo that they

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take especial Care that nothing be preached or taught amongst them, which may any ways tend to alienate the hearts of Our People from Us or Our Government; And that their Meetings and Assemblies be Peaceably, Openly, and Publickly held, and all Persons freely admitted to them; and that they do signifie and make known to some One or more of the next Justice of the Peace, what Place or Places they set apart for those Uses. And that all our Subjects may enjoy such their Religious Assemblies with greater Assurance and Protection, We have thought it requisite, and do hereby Command, that no disturbance of any kind be made or given unto them, under Pain of our Displeasure, and to be further proceeded against with the uttermost Severity. And forasmuch as We are desirous to have the benefit of the Service of all our Loving Subjects, which by the Law of Nature is inseparably annexed to, and inherent in Our Royal Person; and that none of our Subjects may for the future be under any discouragement or disability (who are otherwise well inclined and fit to serve Us) by reason of some Oaths or Tests that have been usually administred on such Occasions; We do hereby further Declare, That it is Our Royal Will and Pleasure, That the Oaths commonly called the Oaths of *Supremacy and Allegiance*; and also the several Tests and Declarations mentioned in the Acts of Parliament, made in the *25th.* and *30th.* Years of the Reign of Our late Royal Brother King *Charles* the Second, shall not at any time hereafter be required to be taken, declared, or subscribed by any Person or Persons whatsoever, who is or shall be imployed in any Office or Place of Trust, either Civil or Military, under Us or in Our Government. And We do further declare it to be Our Pleasure and Intention, from time to time hereafter, to grant Our Royal Dispensations under Our Great Seal to all Our Loving Subjects so to be employed, who shall not take the said Oaths, or subscribe or declare the said Tests or Declarations, in the above mentioned Acts, and every of them. And to the end that all Our Loving Subjects may receive and enjoy the full benefit and advantage of Our Gracious Indulgence hereby intended, and may be acquitted and discharged from all Pains, Penalties, Forfeitures and Disabilities, by them or any of them incurred or forfeited, or which they shall or may at any time hereafter be liable to, for or by reason of their Nonconformity or the Exercise of their Religion, and from all Suits, Troubles, or Disturbances for the same; We do hereby give Our Free and Ample Pardon unto all Nonconformists, Recusants, and other Our Loving Subjects, for all Crimes and things by them Committed or done, contrary to the Penal Laws formerly made relating to Religion, and the Profession or Exercise thereof, hereby Declaring, That this Our Royal Pardon and Indempnity shall be as good and effectual to all Intents and Purposes, as if every individual Person had been therein particularly Named, or had Particular Pardons under Our Great Seal: Which We do likewise Declare shall from time to time be Granted unto any Person or Persons desiring the same. Willing and requiring Our Judges, Justices, and other Officers, to take notice of, and obey Our Royal Will and Pleasure herein before Declared. And although the Freedom and Assurance We have hereby given in Relation to Religion and Property, might be sufficient to remove from the Minds of Our Loving Subjects all Fears and Jealousies in relation to either; yet We have thought fit further to Declare, That We will Maintain them in all their Properties and Possessions, as well of Church and Abby Lands, as in any other their Lands and Properties whatsoever. *Given at Our Court at* Whitehall *the* 4th. *day of* April, 1687. *in the Third Year of Our Reign.*

Ever since We Granted this Indulgence, We have made it Our Principal Care to see it preserved without distinction, as We are encouraged to do dayly by Multitudes of Addresses, and many other Assurances We receive from Our Subjects of all Perswasions, as Testimonies of their Satisfaction and Duty, the Effects of which We doubt not but the next Parliament will plainly shew, and that it will not be in vain that We have resolved to use Our uttermost Endeavours to Establish Liberty of Conscience on such

just

juſt and equal Foundations, as will render it unalterable, and ſecure to all People the free Exerciſe of their Religion for ever, by which future Ages may reap the benefit of what is ſo undoubtedly for the general good of the whole Kingdom. It is ſuch a Security We deſire, without the burden and conſtraint of Oaths and Teſts, which have been unhappily made by ſome Governments, but could never ſupport any; nor ſhould Men be advanced by ſuch means to Offices and Employments, which ought to be the Reward of Services, Fidelity, and Merit. We muſt conclude, that not only good Chriſtians will joyn in this, but whoever is concerned for the increaſe of the Wealth and Power of the Nation. It would perhaps prejudice ſome of our Neighbours, who might loſe part of thoſe vaſt Advantages they now enjoy, if Liberty of Conſcience were ſettled in theſe Kingdoms, which are above all others moſt capable of Improvements, and of Commanding the Trade of the World. In Purſuance of this great Work we have been forced to make many changes both of Civil and Military Officers throughout Our Dominions, not thinking any ought to be employed in Our Service, who will not contribute towards the eſtabliſhing the Peace and Greatneſs of their Country, which We moſt earneſtly deſire, as unbiaſſed Men may ſee by the whole Conduct of Our Government, and by the Condition of Our Fleet, and of Our Armies, which with good management ſhall be conſtantly the ſame, and greater, if the Safety or Honour of the Nation require it. We recommend theſe Conſiderations to all Our Subjects, and that they will reflect on their preſent Eaſe and Happineſs, how for above three Years, that it hath pleaſed God to permit Us to Reign over theſe Kingdoms, We have not appeared to be that Prince Our Enemies would have made the World afraid of, Our chief Aim having been not to be the Oppreſſor, but the Father of Our People, of which We can give no better Evidence than by conjuring them to lay aſide all private Animoſities as well as groundleſs Jealouſies, and to chooſe ſuch Members of Parliament, as may do their part to finiſh what We have begun for the Advantage of the Monarchy over which Almighty God hath placed Us, being reſolved to call a Parliament, that ſhall meet in *November* next at fartheſt.

Quam quidem Regalem Declarationem dicti Domini Regis nunc ultimo mentionatam idem Dominus Rex nunc poſtea ſcilicet triceſimo die Aprilis Anno Regni ſui quarto ſupra dicto, apud Weſtmonaſterium prædictum in Comitatu Middleſexiæ prædicto, imprimi & per totam Angliam publicari cauſavit, & pro magis ſolemni demonſtratione, notificatione, & manifeſtatione gratiæ ſuæ Regiæ benignitatis & benevolentiæ ſuæ ad omnes ligeos ſuos in eadem Declaratione ultimo mentionata ſpecificatos poſtea ſcilicet quarto die Maii Anno Regni ſui quarto, apud Weſtmonaſterium prædictum in Comitatu Middleſexiæ prædicto idem Dominus Rex debito modo ordinavit prout ſequitur.

At the Court at *Whitehall*, the 4*th.* of *May*, 1688. It is this Day Ordered by His Majeſty in Council, That His Majeſty's late Gracious Declaration, bearing Date the 27*th.* of *April* laſt, be read at the uſual time of Divine Service, upon the 20*th.* and 27*th.* of this Month in all Churches and Chappels within the Cities of *London* and *Weſtminſter*, and Ten Miles thereabout; and upon the 3*d.* and 10*th.* of *June* next in all other Churches and Chappels throughout this Kingdom. And it is hereby further Ordered, That the Right Reverend the Biſhops cauſe the ſaid Declaration to be ſent and diſtributed throughout their ſeveral and reſpective Dioceſſes, to be read accordingly.

Et ulterius idem Attornatus dicti Domini Regis nunc Generalis pro eodem Domino Rege dat Curiæ hic intelligi & informari, quod poſt Confectionem prædicti ordinis ſcilicet, decimo octavo die Maii, Anno Regni dicti Domini Regis nunc quarto ſupradicto, apud Weſtmonaſterium prædictum in Comitatu Middleſexiæ prædicto, Willielmus Archiepiſcopus Cantuarienſis de Lambeth in Comitatu Surriæ, Willielmus Epiſcopus Aſaphenſis de St. Aſaph in Comitatu Flintiæ, Franciſcus Epiſcopus Elienſis de Parochia Sancti Andreæ Holborn in Comitatu Middleſexiæ, Johannes Epiſcopus Ciceſtrenſis de Ciceſtria in Comitatu Suſſexiæ, Thomas Epiſcopus Bathonenſis & Wellenſis de Civitate Wells in Comitatu Somerſetiæ,

Thomas

Thomas Epiſcopus Petriburgenſis de parochiâ ſancti Andreæ Holborne in Comitatu Middleſexiæ, & Jonathan Epiſcopus Briſtollenſis de Civitate Briſtol, inter ſe conſuluerunt & conſpiraverunt, ad diminuendam Regiam Authoritatem, Regalem Prærogativam & Poteſtatem, & Regimen ejuſdem Domini Regis nunc *in præmiſſis, ac ad eundem Ordinem infringendum & eludendum*; ac in proſecutione & executione conſpirationis prædictæ, *ipſi iidem Willielmus Archiepiſcopus Cantuarienſis, Willielmus Epiſcopus Aſaphenſis, Franciſcus Epiſcopus Elienſis, Johannes Epiſcopus Ciceſtrenſis, Thomas Epiſcopus Bathonenſis & Wellenſis, Thomas Epiſcopus Petriburgenſis, & Jonathan Epiſcopus Briſtollenſis dicto decimo octavo die Maii Anno regni dicti Domini Regis nunc quarto ſupradicto*, vi & armis, &c. *apud Weſtmonaſterium prædictum in Comitatu Middleſexiæ prædicto*, illicitè, malitiosè, ſeditiosè, & ſcandalosè quoddam falſum, fictum, pernitioſum, & ſeditioſum libellum, in ſcriptis de eodem Domino Rege & Regali Declaratione & Ordine prædictis (prætenſu Petitionis) fabricaverunt, compoſuerunt & ſcripſerunt, & fabricari componi & ſcribi cauſaverunt, *& eundem falſum, fictum, malitioſum, pernitioſum, & ſeditioſum libellum per ipſos prædictum Willielmum Archiepiſcopum Cantuarienſem, Willielmum Epiſcopum Aſaphenſem, Franciſcum Epiſcopum Elienſem, Johannem Epiſcopum Ciceſtrenſem, Thomam Epiſcopum Bathonenſem & Wellenſem, Thomam Epiſcopum Petriburgenſem, & Jonathanum Epiſcopum Briſtollenſem manibus ſuis propriis reſpectivè ſubſcriptum die, & anno, & loco ultimo menconatis* in præſentiâ dicti Domini Regis nunc vi & armis, &c. publicaverunt, & publicari cauſaverunt; *in quo quidem falſo, ficto, malitioſo, pernitioſo & ſeditioſo libello continetur*——

The Humble Petition of *William* Archbiſhop of *Canterbury*, and of divers of the Suffragan Biſhops of that Province (now preſent with him) in behalf of themſelves and others of their abſent Brethren, and of the Clergy of their reſpective Dioceſſes,

Humbly ſheweth,

THAT the great Averſeneſs they find in themſelves to the diſtributing and publiſhing in all their Churches, Your Majeſties late Declaration for Liberty of Conſcience, proceedeth neither from any want of Duty and Obedience to Your Majeſty; our Holy Mother the Church of *England* being both in her Principles and in her conſtant Practice unqueſtionably Loyal, and having to her great Honour, been more than once publickly acknowledged to be ſo by Your Gracious Majeſty; nor yet from any want of due Tenderneſs to Diſſenters, in relation to whom they are willing to come to ſuch a Temper as ſhall be thought fit when that matter ſhall be conſidered and ſetled in Parliament and Convocation. But among many other Conſiderations, from this eſpecially, becauſe that Declaration is founded upon ſuch a diſpenſing Power, as hath been often declared illegal in Parliament, and particularly in the Years 1662, and 1672. and in the beginning of Your Majeſties Reign; and is a matter of ſo great Moment and Conſequence to the whole Nation, both in Church and State, that your Petitioners cannot in Prudence, Honour, or Conſcience, ſo far make themſelves Parties to it, as the Diſtribution of it all over the Nation; and the ſolemn Publication of it once and again, even in God's Houſe, and in the time of his Divine Service, muſt amount to, in common and reaſonable Conſtruction.

——In contemptum *dicti Domini Regis nunc*, & Legum hujus regni Angliæ, *manifeſtum, in malum exemplum omnium aliorum in tali caſu delinquentium, ac contra pacem dicti Domini Regis nunc, Coronam & Dignitatem ſuas*, &c. *Unde idem Atornatus dicti Domini Regis nunc generalis pro eodem Domino Rege petit adviſamentum Curiæ hic in præmiſſis*, & debitum legis proceſſum verſus prætatos *Willielmum Archiepiſcopum Cantuarienſem, Willielmum Epiſcopum Aſaphenſem, Franciſcum Epiſcopum Elienſem, Johannem Epiſcopum Ciceſtrenſem, Thomam Epiſcopum Bathonenſem & Wellenſem, Thomam Epiſcopum Petriburgenſem, & Jonathanum Epiſcopum Briſtollenſem fieri; ad reſpondendum dicto Domino Regi de & in præmiſſis*, &c.

T. Powys.
W. Williams.

Mr. *Attor. Gen.* My Lord we humbly pray, that according to the Rules of the Court in ſuch Caſes, my Lord Archbiſhop of *Canterbury*, and my Lords the Biſhops may Plead to the Information.

Mr. *Solli. Gen.* My Lords the Biſhops are here in Cuſtody in Court, upon the higheſt Commitment that can be in this Kingdom, to wit, That of the King in Council; and we pray, that according to the Courſe of the Court they may Plead to the Information preſently.

L. Ch. Juſt. What does his Grace and my Lords the Biſhops ſay to it?

Mr. Serj. *Pemberton.* Will your Lordſhip give us leave who are of Council for his Grace my Lord of *Canterbury*, and the reſt of my Lords the Biſhops, to ſpeak a word in this Matter?

L. Ch. Juſt. Ay Brother, go on.

Mr. Serj. *Pemberton.* That which we have to deſire of your Lordſhip and the Court, is this, We have now heard this Information Read, and 'tis plain we could know nothing of this before, the Warrant of Commitment being only in general for a Libel; and this being a Caſe of the greateſt Conſequence, peradventure, that ever was in *Weſtminſter* Hall, (that, I think, I may boldly ſay, it is a Caſe of the greateſt Conſequence that ever was in this Court) and it being a matter of this Nature, that theſe Great and Noble Perſons my Lords the Biſhops are here taxed with, that is, for making a Seditious Libel contained in ſuch a Petition (as though it was a Libel to Petition the King) We do beg this of your Lordſhip, that (it being of this great Importance) to the end we may come prepared to ſay what we have againſt it, We may have an Imparlance till the next Term.

Mr. *Finch.* Pray my Lord favour me with a Word on the ſame ſide, for my Lords the Biſhops, You Lordſhip ſees now, how neceſſary the trouble we gave you before, in making our Objections againſt the reading of the Information was, and what the drift and aim of the Kings Councel was, in the deſiring the Information to be read firſt; for now it is read, What is it that they deſire of your Lordſhips? They deſire that my Lord Arch Biſhop, and my Lords the Biſhops being in Cuſtody, and brought here in Cuſtody, they may be now ſo Charged with this Information, as to Plead preſently: This my Lord we oppoſe, and with humble Submiſſion we ought to have time to Imparle, and a Copy of the Information, that we may conſider what we have to Plead to it; for however we come here into Court, whether legally or not legally, yet ought we in the one and in the other Caſe, to have time to Conſider of our Defence. And my Lord, till of later time this Practice which the Kings Counſel now calls the Courſe of the Court, was never uſed, nor was any Man required to Plead immediately; and my Lord, if the Practice of the Court has not been anciently ſo (as I do believe they will ſcarce ſhew it to be Ancienter than a few years laſt paſt) then with humble ſubmiſſion, though the Courſe of the Court have been ſo for ſome little time paſt, yet it is not in the power of the Court, (as we humbly Conceive) to make a Courſe in prejudice of all the Priviledges that the Kings Subjects are by the Antient Rules of Law intituled to; they cannot make a new Law in prejudice of any Right or Priviledge which the Subject hath, and call it the Courſe of the Court: Now that this which we deſire for my Lords the Biſhops, is the Right and Priviledge of the Subject, is moſt manifeſt; for there might be many Defences that a Man may have to make to an Accuſation of this Nature, which it is impoſſible for him to know at the firſt hearing of an Information read, and yet which would be neceſſary for him to make uſe of, or at leaſt it would be impoſſible for him to make uſe of in ſuch a manner as the Law doth allow of and require. It may be the Pleas which he has to Plead may be ſuch as that he has not time to put into form; there may be Matters upon the hearing the Information read, that it would be neceſſary for him to give anſwer to, which he knew not of before, and therefore may neither have Materials ready, nor be capable of putting them (if he had them ready) into ſuch Form as the Law requires. They tell you on the other ſide, that if a Man be brought into Court by Legal Proceſs, he may be Charged with any Information whatſoever, that they are not tied to the Fact alleadged in the Commitment,

Commitment, but finding the Party under a Legal Impriſonment, they can exhibit an Information againſt him for any other Offence. Then, my Lord, would I fain know, which way any Man alive can be prepared to make his Juſt and Legal Defence, for he knows not his Accuſation; for tho' he think it may be for that for which he was Committed, yet it may prove otherwiſe, and then he can be no way provided with Materials for his Defence, but he muſt loſe all Advantages which the Law gives him for his Defence. My Lord, if this be the courſe of latter times, yet you will not take that to be ſuch a Law, as is binding to all future times; and we are ſure the King's Counſel cannot ſhew, that this was the Ancient Practice, for that was quite otherwiſe.

L. C. Juſt. Mr. *Finch*, you were not here, I ſuppoſe, when this Queſtion came in debate in this Court lately, in the Caſe of a very great Perſon; 'twas urged very earneſtly and very learnedly by one that ſtands by you; we upon that Debate asked Sir *Samuel Aſtry*, what the Courſe of the Court was, and he told us, that the Courſe of the Court (of his own knowledge for all the time that he had ſat as Clerk of the Crown in this Court) was, that when any one was brought in Cuſtody, or upon a Recognizance, they were to plead preſently.

Mr. Finch. Sir *Samuel Aſtry* has not been here ſo very long, as to make the Practice of his time the Courſe of the Court.

L. C. Juſt. But I will tell you what he ſaid further, if you will hear me; he ſaid, he had enquired of Mr. *Waterhouſe*, whom we all know to have been an old Clerk in the Crown Office, and he told him, that that had been the practice all his time.

Mr. Serj. Pemb. My Lord, I hope the courſe of the Courts of *Weſtminſter-Hall* ſhall not depend upon the Certificate of ſuch a one as Mr. *Waterhouſe*, who is a Man (we all know) is ſuperannuated, and very defective in his Memory.

Mr. Juſt. Powel. Certainly what they deſire for the Defendant is very reaſonable, for I take the Point to be only this; whether a Man may be compelled, being in Cuſtody, to Plead to an Information preſently.

Mr. Juſt. Allibone. Pray Brother *Powell* ſpare me a word in this matter; Mr. *Finch*, I ſuppoſe you labour that, the Court will not deny you, that you may have time to plead according to the courſe of the Court: We are not making new Courſes for particular Facts, that by my conſent we will never do; but if you ſay ſuch a thing is not the courſe of the Court, and the King's Counſel affirm it is, how ſhall this be determined? and from whom can we take our Information to determine what is the courſe? I am ſure there is none of us that are here now, can pretend to tell what the Ancient courſe was, for my part I declare it, I cannot; and I know no reaſon there ſhould be any Novelty introduced into the Court upon any ground or reaſon whatſoever, nor will I conſent to any while I ſit here. Therefore I deſire to know what is the Ancient Courſe, and how we ſhall come to the knowledge of that Courſe, if not by the Certificate of thoſe who have been Ancient Officers of the Court?

L. C. Juſt. Nay, that is certain, the Court will bring in nothing new in any ſuch Caſe as this.

Mr. Juſt. Allibone. If that hath not been the Antient Courſe without exception, I am againſt it; I know no Reaſon my Lords the Biſhops ſhould have any thing new put upon them; on the other ſide, they muſt not expect to have the Ancient Courſe of the Court declined in their Caſe.

Mr. Pollixf. Pray, my Lord, hear me a little in this matter; 'tis not my deſire that any Law ſhould be altered for any particular Caſe, and the Courſe of the Court I know is the Law of the Court; but I humbly crave leave to ſay, That I take the Ancient Courſe of the Court to be quite otherwiſe, than what the King's Counſel would have it; there may be particular things done now and then, perhaps in particular Caſes, and upon particular Occaſions, which will not make what is ſo done to be the Courſe of the Court, nor be a binding Rule to you. Now as to this matter, of time or no time, to plead to an Information, I remember the time very well, when I and ſome others that ſtood at the Bar, and wondred when we ſaw this practice coming in, and thought it a very hard and miſchievous thing, for (in truth) the ſeveral Plots that have been, and the heats

of

of men about those things, have brought in this Course; for certain I am, and I dare affirm there never was any such Course here before, neither upon Warrant from the Chief Justice, nor upon Recognizance, or any other Process, was a Man compelled to plead instantly, without having a *Capias* in the regular form after a Contempt for not appearing upon Summons: Truly, my Lord, we had no Interest in the matter one way or other, to make us scruple it any otherwise than as we were concerned, that the Law and Justice of the Nation should have its true and ancient Current. And this I can assure your Lordships, that here was both my Lord Chief Justice *Saunders*, and Mr. *Serj. Holt* and my self, who take notice when this was first offered at, to make a man plead immediately without giving him time to consider what he should plead, could not but say among our selves, that it was an unreasonable thing; and we were inclined to speak to the Court to inform them of the Consequence of it, which needs must be very mischievous. Sir *Samuel Astry*, we know, came to be Clerk of the Crown in my Lord *Scroggs*'s time; we know 'tis usual and customary for the Court to ask what is the Course of the Court in doubtful Cases, and to receive the Information from the Officers of the Court on both sides. If it be on the Plea side from Mr. *Aston*, if on the Crown side, from Sir *Samuel Astry*, concerning things of Practice, but I did never think that what they reported was final and conclusive to the Court: But to make this matter clear, I humbly pray, that you would please to give order for the search of old Precedents, how the old Practice really hath been; every thing that has been done in hot times, is not to be made a standing Rule: If there do any such thing appear to have been done and practised antiently, truly, my Lord, I will submit, and say I am under a mighty mistake; but if this which is now urged for the Course of the Court, is nothing but what the Zeal of the Times, and Heat of Persecutions hath introduced; surely that is not fit to be a constant Rule for the Court to go by; for every one knows, that the Zeal of one time may bring in that by surprize upon one Man, which when things are cooll, or at another time will appear to be plain Injustice. We have indeed seen strange things of this kind done before, but I hope to God they are now at an end, and we shall never see any such thing done hereafter; and as for this particular Point, I think it is a wonderful thing in the Consequence of it, if the Law should be as they would have it: Here is a long Information just read over to a Man (but whether long or short, as to the main Point, 'tis the same) and you say the Course of the Court is, he must plead to it immediately; surely matters of Crime that require Punishment to be inflicted on men, are of as much consequence and concern, as any Civil matter whatsoever; and Men are to have their Rights in those matters preserved, as well as in other matters, which is all I press; for suppose a man has a special matter to plead, as particularly suppose it be the King's Pardon, I cannot give this in Evidence upon a Trial after not guilty pleaded, then I ought to plead it; but what if I have it not ready, 'tis not telling the Court of it, without shewing of it, that will do; and it may be a man that is taken up, and brought hither in Custody, cannot have it ready to shew; but yet then by this Rule a man shall lose the benefit of his Plea, by being compelled to answer immediately: But they say, the Court will do right, I suppose they will; and my Lords the Bishops in this case I believe do not distrust, but that the Court will do right; but I never thought the Law was brought to that pass, that such things as these were left wholly in the discretion of the Court; certainly Imparlances, time to plead, and just Preparations for a man's defence, are things that the Law has setled, and not left in the discretion of the Court; and truly to me it seems all one utterly to take away a man's Defence, as to hinder him of the means to prepare for it. My Lord, here is an Information before you against these Noble Lords, it is a matter of great moment, and tho', I hope in God, there is no great cause for it, yet however since such Persons are concerned, and 'tis a matter of such great weight, I hope you will give us such an Imparlance, as if we had this day appeared upon the ordinary Process, which is an Imparlance until the next Term.

L. Ch. Juſt. There is a difference between this and that other Caſe, if my Lords the Biſhops had appeared upon the Summons, they would have had an Imparlance of Courſe; but when they are brought up hither in Cuſtody, that mightily alters the Caſe, but that we may not be too haſty in a thing of this nature, let the Clerk of the Court be conſulted with, that we may know what the true Courſe is.

Mr. Att. Gen. My Lord, we pray Sir *Samuel Aſtry* may be examined a little about it.

Mr. Juſt. Allybone. Mr. *Pollixfen*, I believe the Court is unanimous in their Reſolutions of making nothing new in this Caſe; but pray give me leave to tell you, this is not the firſt time that this Queſtion has come to be agitated in this Court ſince I came hither. Now from whence can the Court take their meaſures to be rightly informed what the Practice of the Court is, but from the Information of the Officers of the Court, who by their conſtant Imployment, are moſt capable of knowing what the Courſe is. Now if you come to offer any thing that may be matter of doubt to the Court, concerning the Practice of the Court, you having known that this thing was controverted before (for ſo it has been) ſhould have provided your ſelf with ſomething that muſt be a reaſonable motive for us to doubt; for this has not been only once, but often moved; and our Officers have been conſulted with concerning this Queſtion, which took its riſe from ſuch Objections as you have made now: Now for you to tell us, That you deſire that we would look into Precedents, is, methinks, pretty odd; if you had brought us any Precedents, it had been ſomething: And withall I muſt tell you, that you muſt not reckon the favour of the Court in any particular Caſe, to be the ſtanding Rules for the Practice and Courſe of the Court; but inſtead of bringing Precedents, you only offer your own Thoughts, and thoſe would create no doubt in us, but what has been before ſatisfied upon Examination of the Officers of the Court.

Mr. Pollixfen. Pray Sir, will you give me leave to anſwer you one word.

Mr. Juſt. Powell. Truly I have not obſerved that ever this Point was ſtarted ſo, as to beget a Queſtion ſince I came hither, but only in the Caſes of the *Quo Warranto's*; and truly in that Caſe I thought it hard they ſhould be denied time to plead, eſpecially the Conſequence being ſo fatal.

L. Ch. Juſt. Yes, yes, Brother, it has been ſeveral times.

Mr. Juſt. Powell. Truly, my Lord, I have not obſerved it, nor do I remember it.

Sir Rob. Sawyer. My Lord, I have always taken the diſtinction, as to theſe Matters, to be this——

Mr. Juſt. Powell. But, my Lord, if the ancient Courſe of the Court hath been to grant an Imparlance, and a Copy of the Information before they plead, I ſee no reaſon why my Lords the Biſhops ſhould not have the benefit of that ancient Courſe; for if a man that is ſued at Law for a Two-penny Treſpaſs, ſhall have that advantage as to receive a Declaration, and have time to plead what he can to it, why ſhould not my Lords the Biſhops in a matter of ſo great weight, have the ſame advantage too? But indeed, if the Courſe of the Court had been anciently otherwiſe, I can ſay nothing to it; for the Courſe of the Court is certainly the Law of the Court.

Mr. Juſt. Allybone. Brother *Powell* you ſay well, if they did produce any one Precedent to give us occaſion to doubt in the matter.

Sir Rob. Sawyer. Pray, good my Lord, will you give me leave———

Mr. Attorn. Gen. Why, Sir *Robert Sawyer*, will you never have done?

Mr. Soll. Gen. No, they are all ſo zealous, and eager in this Caſe, that they wont permit either the Court, or any body elſe to ſpeak a word but themſelves.

Mr. Serj. Pemberton. Good Mr. Sollicitor, give us leave to anſwer the Objection that the Court hath made to us; we would ſatisfie your Lordſhip where the Diſtinction really lieth, where there has been an Opportunity for the party to come in, as by Summons or Subpæna, or the like, and he has ſlipped that opportunity, and ſo the King is delayed, in

that Caſe they always uſed to put the Party upon Pleading preſently, when he was taken up upon a *Capias*, and brought in Cuſtody; but when there was never any *Subpæna* taken out (as the Caſe is here,) ſo that the Party never had an opportunity to come in and render himſelf, and appear to Anſwer it according to the due Courſe of Law, an Imparlance was never yet denyed, nor time to Plead; and that is the Caſe here.

Sir *Robert Sawyer*. My Lord, Mr. *Serjant* has given you the true diſtinction, where Proceſs has gone out to ſummon any one to appear to an Information, and he hath failed to appear according to the Summons, and the Proſecutor for the King takes out a *Capias*, if he be brought in upon that *Capias*, the Ancient Courſe has been ſo as they ſay: But for that other matter, where a Man comes in upon a Commitment at the firſt Inſtance, and an Information is put in juſt as this is, the ſame Morning and not before; if they can ſhew any one Precedent of this kind Fifteen years ago, I would be contented to yield that they are in the right, but I am ſure they are not able to do it: In Sir *Mathew Hales*'s time when this was moved, it was refuſed; and he was clear of another Opinion.

Mr. *Attor. Gen.* I hope now my Lord we ſhall be heard a little for the King, and I cannot forbear obſerving in the firſt Place ſomewhat that theſe Gentlemen have offered at, who are now inveighing againſt the heat of the Times, when a great part of that heat, we know who were the Inflamers of; but what is all this to the purpoſe? The Queſtion is barely this, Whether when a Man is brought in Cuſtody into this Court, and Charged with an Information, he ſhall not by the Courſe of the Court be compelled to Plead preſently.

Sir *Robert Sawyer*. To Indictments for Treaſon and Felony, he ſhall be Compelled to Plead preſently, but not to an Information for Miſdemeanours.

Mr. Juſt. *Powel*. It ſeems to me very hard he ſhould.

Mr. *Attor. Gen.* Sir there are many things that ſeem hard in Law, but yet when all is done, the Judges cannot alter the Law; 'tis a hard Caſe that a Man that is tryed for his Life for Treaſon or Felony cannot have a Copy of his Indictment, cannot have Council, cannot have his Witneſſes ſworn, but this has been long practiced, and the uſage is grown to a Law, and from time to time it hath been ſo taken for Law, it cannot be altered without a new Law made, as it hath been heretofore, ſo it muſt be now, till a greater Authority alter it; and ſo, as to the Caſe here at preſent, if it were a new Caſe, and it was the firſt Inſtance, I muſt Confeſs I think I ſhould not preſs it, but if this be the Conſtant Practice of the Court, and if theſe Gentlemen that now oppoſe it, ſome of them Miniſterially, ſome of them Judicially, have themſelves Eſtabliſhed this Practice, they have no reaſon to wonder, that we follow them in it, we do not blame them for what they do now; for Men when they are of Council may be permitted to argue for their Client contrary to their former Opinions, but if theſe things by their procurement have done thus before, ſurely without Offence we may pray the like may be gone now. 'Tis our duty on behalf of the King to deſire that he may have Right done him, as well as they on the behalf of my Lords the Biſhops, and for the uſage to Cite Precedents were endleſs, eſpecially of late times, and theſe Gentlemen know them all very well, for they were ſome of them Parties to them themſelves, and we can do no more, nor need, than to put them in mind of their own doings, whether it was ſo before their time or not, it concerns them to make out and retract their own Errors; but in our obſervation, if ever this was preſſed or inſiſted upon on the Kings behalf, this Courſe has always been perſued.

Sir *Robert Sawyer*. For a Precedent my Lord there is the Caſe of my Lord *Hollis*, where there was given time after time.

Mr. *Soll. Gen.* That was only time to argue the Plea to the Juriſdiction of the Court.

Mr. Juſt. *Powel*. Mr. *Solli.* have you ever known it conteſted, and upon Debate ſo Ruled, in an Information for a Miſdemeanour, as this Caſe is?

Mr.

Mr. Sol. Gen. If you pleaſe to ask Sir *Samuel Aſtry*, he will inform you how the Courſe has been.

L. C. Juſt. What ſay you, Sir *Samuel Aſtry?*

Sir Sam. Aſtry. My Lord, when I came into this Place, there was an Ancient Gentleman that had been long a Clerk in the Office.

L. C. Juſt. How many years is it ſince you came into this Office?

Sir Sam. Aſtry. About a dozen years, I think, my Lord; and he ſat in this place where Mr. *Harcourt* does now, he was always accounted a Loyal, Honeſt, and Intelligent Man, that is Mr. *Waterhouſe*, who is now alive; and when I came into my Office, I took my Inſtructions in a great meaſure from him, and asked him, what the Courſe of the Court was, in ſuch Caſes which I my ſelf did not underſtand; for tho' I had been an Attorney Twenty years, yet it was on the other ſide, the Civil ſide; and tho' I knew ſome things of my own knowledge, yet I did not ſo well know the whole practice of the Court, and particularly I asked him, what was the Courſe of the Court in this Caſe that is now in Queſtion, and he told me, that in all his time and experience, if a Man appears upon a Recognizance, or was a Perſon in Cuſtody, or appeared in *propria perſona*, as a perſon Priviledged, he ought to Plead at the firſt inſtance, and according to that practice, when Sir *Robert Sawyer* was Attorney General it was the conſtant practice, and I am ſure he knows it is no new thing.

Sir Rob. Saw. But upon what Informations, Sir *Samuel Aſtry*, were they Informations upon Miſdemeanors?

Sir Sam. Aſtry. Yes, ſeveral.

Sir Rob. Saw. But was there not Proceſs taken out firſt to call the Party in?

Sir Sam. Aſtry. Yes, where Proceſs was never taken out.

Mr. Att. Gen. For how long time is this that you ſpeak of your own knowledge, Sir *Samuel?*

Sir Sam. Aſtry. About a dozen years.

Mr. Serj. Pemb. It was never done till very lately, but after the Party was in Contempt for not appearing.

Mr. Sol. Gen. I would ask you, Sir *Samuel Aſtry*, one Queſtion: Was the uſual Proceſs of *Subpœna* firſt taken out? for Mr. Serjeant *Pemberton* ſays it was, do you find any Warrant for ſuch a difference as that?

Mr. Serj. Pemb. Do you find any ſuch Caſe as this is?

Mr. Sol. Gen. Nay, pray Mr. Serjeant, give us your favour, and let us ask our Queſtions according to your own Doctrine. How do you find the Practice to have been as to that diſtinction they have made?

Sir Sam. Aſtry. Sir, I would be very loath to inlarge the Precedents of the Crown-Office furthar than the truth is; I tell you whence I took my Inſtructions, from Mr. *Waterhouſe*, who was an Ancient Clerk in the Office, he has been in that Office Sixty years, and the Inſtructions I took from him, were, that this was the Practice all his time, and it has been aſſerted all my time; it has been often conteſted, I confeſs, and Mr. *Pollixfen* has always oppoſed it, and moved againſt it, but it has been always ruled againſt him: I know it was againſt his Judgment, but the Court always over-ruled it.

Sir Rob. Saw. Sir *Samuel Aſtry*, can you give any one Precedent before you came into this Office?

Sir Sam. Aſtry. Sir, I can go no farther than this that I have told you, what Information I received from him.

Sir Rob. Saw. What is all this but a Certificate from Mr. *Waterhouſe?*

L. C. Juſt. We can be informed no otherways than by Certificate from the old Clerks of the Office.

Mr. Serj. Pemb. Alas, he is a Child, and not fit to do any thing.

Mr. Pollixf. We all know Mr. *Waterhouſe* very well, he is a very weak Man, and always was ſo, and there is no depending upon any thing that he ſays.

Mr. Sol. Gen. Pray, my Lord, will you hear us a little for the King.

The Biſhop of Peterborough *whiſpering with Sir* Rob. Sawyer, *Mr. Sollicitor ſaid to him, My Lord, you had better look another way, and look towards the Court, for there your buſineſs lies.*

L. Ch. Juſt. Well, Mr. Sollicitor, What ſay you?

Mr. Soll. Gen. My Lord, it appears plainly, that the King is in poſſeſſion of this Priviledge, and has been ſo for theſe dozen Years, for ſo long the Juſtice of the Kingdom towards all the Subjects, hath run in all the inſtances of it in this Channel; and tho' it has been conteſted as often as Mr. *Pollixfen* has been of Counſel for the Defendant, in ſuch Caſes, it has always been ruled againſt him; he indeed has made his continual Claims (Sir *Samuel Aſtry* ſaies) he has raiſed the Duſt, and made a Hue and Cry, but it has always gone againſt him. And I would ask the reſt of you Gentlemen that are of Council for my Lords the Biſhops, (for ſome, or one of you I am ſure, has been concerned in every Information that has been exhibited in this Court for this nine or ten Years laſt paſt, I would ask you) whether in any Information that you have been concerned in, if the Party being brought in by Proceſs, inſiſted to have time and an Imparlance, it was ever granted him. I know you will not ſay, it ever was; why then ſhould there be more done in this Caſe, than has been done in all other Caſes this ten Years? 'Tis not ſufficient to make Declarations againſt the unreaſonableneſs of the Practice, for it is but what you have done your ſelves, and inſiſted upon for Law; and all thoſe men that upon Informations have been compelled to plead, have had Injury done them; or elſe theſe Lords will have no Injury by the Court's taking the ſame Courſe. It is true, my Lords, the Biſhops are Peers, and here are Seven of them, and Seven Lords go a great way; they make a Committee, I think, in the Houſe of Peers, and a mighty matter is made of it, that this is the Caſe of ſo many Lords: But will you alter the Courſe of the Court, becauſe Seven of my Lords the Biſhops are concerned in it, and they make a mighty ſtir about the Reaſonableneſs of the thing? How can it be believed that the Law will not give a man time to make his Defence? They agree themſelves, that if it were in the Caſe of Life and Death, they muſt plead preſently; and doth not the ſame Reaſon hold? and may not an Argument be drawn *à fortiori*, in the Caſe of a Miſdemeanour? If I am not to have time when I plead for my Life, there is leſs Reaſon I ſhould have time to anſwer a Treſpaſs: But, my Lord, 'tis not Reaſon that weighs in the Caſe, 'tis the Courſe of the Court, which is the Law of the Court that we are contending for; and what is there in the Caſe that ſhould require ſo much time for my Lords the Biſhops to plead to it? It is charged in the Information, that theſe Noble Prelates did make a Libel which was produced by them, and publiſhed in the Kings preſence, they can eaſily tell whether they have done this, or not done it: what can they plead, but the general Iſſue? They talk of ſpecial matter to be pleaded, but can they ſhew any more that they can ſay, than what any poor ordinary Countryman, if he were here to plead to an Information, could ſay? that is, whether he was Guilty, or not Guilty. Theſe Lords can tell whether it be true, that they did publiſh the Paper laid in the Information, and then your Lordſhip will tell them what will be the Conſequences of that Publication in point of Law. We ſay all this was done at *Weſtminſter*, there the Scene is laid, and it is not an Information for an old ſtale thing done a great while ago, but a thing that was done yeſterday, and a thing notorious enough, their conteſting with the King about his Declaration of Indulgence. And as to what Mr. *Finch* has ſaid, That this is a Novel Invention, and a Trick to rob a man of his juſt Defence; ſure he forgets who it is that taught us the Trick, if it be a Trick, we have learnt it from thoſe that trick'd before us, and what is it that

theſe Lords do deſire? they would have an Imparlance till *Michaelmas* Term: does or can your Lordſhip think they ask that which is reaſonable? to have ſix Months time to plead not Guilty to an Information for a Libel; and when ſo many men have been denyed it formerly upon the inſtigation of thoſe very Gentlemen, that now preſs ſo very hard to have it granted; ſure they muſt expect to be denyed it too; and all this while theſe Lords lye under this accuſation, which is not ſo trivial a matter as ſome would make it; I believe my Lords the Biſhops have a deſire to be cleared, I ſuppoſe it is only their Council that deſire to delay it, upon what ground I know not, I believe they themſelves would be glad to remove the imputation, which would be beſt done by a Tryal, and the ſooner the better: If they have a mind to juſtifie themſelves, this is the readieſt courſe for it, and they may do it preſently, by Pleading Not Guilty; My Lord, I know I am in a great Auditory, and abundance of your Lordſhips time has been taken up already, I preſs it therefore for the ſake of the King, and for the ſake of my Lords the Biſhops, we ſhall elſe have all hang in ſuſpence, and hang in the Air for ſix Months longer, therefore let the matter be put upon a fair Iſſue, ſo as it may come to a ſpeedy Determination; I am ſure if theſe Lords be innocent to day, they will be innocent to morrow, and if it were my own caſe, I would deſire to have it Tryed as ſpeedily as I could, and therefore I pray they may plead immediately.

Mr. J. Powel. Mr. *Soll.* What do you ſay to the Difference that was taken between a perſon that was brought in Cuſtody at the firſt inſtance where there is no contempt to the Proceſs of the Court, and one that comes in here by *Capias*, upon default of appearing at the Summons.

Mr. Finch. My Lord, If I apprehend them aright, they give us more than we did ask, for Mr. *Sollicitor* has laid it down as a Rule, that if a Man is taken upon a *Capias* in a Mean Proceſs, he ſhall have no Imparlance.

Mr. Soll. Gen. No, you are greatly miſtaken, Sir, and I pray don't lay down Rules for me.

Mr. Finch. If I am Sir, I beg your pardon, but this I am ſure of, if a *Venire Fac.* goes out, which is in the nature of a *Subpœna*, and the party appear to it, that being the firſt time he could come into Court, you cannot force him to plead to an Information, but he has an Imparlance of Courſe.

Mr. J. Powell. Methinks it ſeems very reaſonable, that this forcing a Man to plead preſently ſhould be only a puniſhment for a Contempt of the Court, and pray, were my Lords the Biſhops in contempt to the Court when they came here to day? Certainly they were not, for no man is in contempt, but he that being ſerved with Proceſs, diſobeys that Proceſs, and if my Lords the Biſhops had been ſerved with a *Subpœna* and had not appeared, then there would have gone out a *Capias* to bring them in, and ſo they would have come in upon a Contempt, and then they would have come within the Rule.

Mr. Soll. Gen. If you have a mind to it, you may ask Sir *Samuel Aſtry* again.

Mr. Att. Gen. If they come in upon Bail they ought to plead preſently.

Mr. J. Allybone. Mr. *Finch* I'le tell you what ſticks with me, truly you could not but be aware that this would be required of you; for this very thing was in debate laſt Term, and you know what Rules the Officer ſaid was the Courſe of the Court, why did you not therefore come prepared with ſome Preſidents, to ſhew us what the courſe of the Court is?

Mr. Att. Gen. Truly my Lord, at this rate, we ſhall keep your Lordſhip here all this Afternoon, if theſe Gentlemen will not be ſatisfyed with the Rule of the Court, and for an Anſwer to what Mr. Juſtice *Powel* ſays, if any Ryot be committed in the Countrey, and the Parties are bound by Recognizance to appear here, that is no proceſs of this Court, and ſo conſequently there can be no contempt, and yet they muſt Plead preſently.

Mr. J. Powell. There is a particular reaſon for that, becauſe they are bound by Recognizance, Sir *Samuel Aſtry* and others ſay, that if they come in by Recognizance they muſt plead preſently.

Mr. Soll. Gen. But for the thing it ſelf, (that the people that hear us, may not imagine that this Court puts a hardſhip upon my Lords the Biſhops, more than is done in other Caſes) it is beſt to keep the ſame Rule as is in all other Caſes;

for when all is done, when Juſtice goes with an Equal Current, without any regard to one perſon or other, then every body is ſafe, and all perſons concerned do their duty; ſo in this caſe, here be no Preſidents produced, wherein it has been otherwiſe, then can no perſon complain but that things go in this Caſe, as they do in all other Caſes; perhaps ſuch a Caſe (as to the Fact of it) never hapned before, but for the Law of it, that is plain, and the ſame as in all other Caſes; for that there may be an Information againſt my Lords the Biſhops, as well as other people, if they make Libels, ſure it is no doubt at all; and if an Information lies againſt them for it, they are under the ſame Rules as others are: but theſe Gentlemen talk of being ſurprized, and that this is the firſt time they have heard of this Information, but have we told any news in this Information? Was not all that is contained in it, notoriouſly enough known before? Was not the Kings firſt Declaration very well known? Was not his ſecond Declaration very well known? Was not his Order of Councel for the Reading of the Declaration very well known? Is not your own Petition a thing very well known to yourſelves and all the world? Then theſe being the particular Facts, of which this Information is made up, and we only ſay you did do this Fact, and we ask you, did you do it, or did you not? Can there be any great ſurprize in this? My Lord, I cannot ſee any thing that alters this from the common Caſe, but only their being Peers, and ſince this queſtion has been heretofore under conteſt, theſe Gentlemen have had time enough to have prepared Precedents, to differ this from the common Rule, if they could; but ſince they cannot, we deſire they may have the ſame Rule, that is in all other Caſes, and then to be ſure, all will go right.

L. C. J. Sir *Samuel Aſtry*, pray will you tell us, whether ever the Court uſed to grant an Imparlance where a perſon comes in in Cuſtody; or did you ever know, when a perſon comes in upon a Commitment, time was given him to Plead?

Mr. Ser. Pemberton. Have you ever known it diſputed, and denyed?

Sir *S. Aſtry.* My Lord, I have known that 'tis in the diſcretion of the Court to grant what time they pleaſe.

L. C. J. Is it the courſe of the Court to give an Imparlance?

Sir *S. Aſtry.* No, 'tis the favour of the Court, and if the Defendants have at any time ſhewed a reaſonable Cauſe, that they have ſpecial Matter to plead, or any other cauſe allowed by the Court, the Court has ſometimes Indulged them ſo far, as to give them time.

L. C. J. But how is the ordinary courſe Sir *Samuel Aſtry*?

Mr. J. Allybone. Ay, for as I ſaid before, things done in particular Caſes in favour, are not Precedents.

Sir *S. Aſtry.* I have told your Lordſhip the Courſe is this, that any perſon that appears upon a Recognizance. or is taken up by your Lordſhips Warrant, or by a Warrant from a Juſtice of Peace, or any other way in Cuſtody, or any Officer of the Court, that is a Priviledged perſon, and that muſt appear *in propria perſonâ*, muſt plead preſently; if the Court upon particular Reaſons do not give him time; and this I received Information of, as the practice of the Court, from *Mr. Waterhouſe*, who had been a Clerk in the Office ſixty years.

Mr. Soll. Gen. He ſaid ſo before, but theſe Gentlemen will never be contented, unleſs they have a new Law made for them.

Mr. *Pollixfen*, My Lord, I would not unneceſſarily trouble your Lordſhip; but truly, this is a caſe of great Concern. And firſt of all, I think we ſhall all agree, that what has been uſed for ten or twelve years paſt will not make the Courſe of the Court, and next I perceive they do not bring any one Inſtance for any proceeding of this ſort above ten or twelve years old, but then (ſay they) on the other ſide, Why do not you bring Preſidents, that it has gone otherwiſe heretofore? My Lord, that cannot be done, for it is a Negative on our ſide, that this which they deſire is not the Courſe of the Court; but then (as it is impoſſible) to prove a Negative, ſo the Proofs ſhould come on the other ſide, that this has been done: they ought to ſhew it, if there has been any ſuch thing as a ſtanding Rule, or elſe, it ſhall be preſumed an Innovation, as being contrary to all Reaſon; But My Lord, becauſe they put it upon us, there is this Proof on our ſide, as much as a Negative can afford: In thoſe proceedings, that were in the great Caſe of the *Habeas Corpus*, there was an Information a-

gainſt

gainſt *Elliot* and others, they had time given them to Plead over and over, ſo that there is one Precedent: And as many as theſe Caſes in former times as can be found, will ſhew that this was always the Courſe; but pray (ſay they) produce us one Inſtance, that ever there was a man that came in upon a Recognizance, that had time to Plead; truly My Lord, I cannot juſt now tell whether any ſuch Inſtance can be produced, but I verily believe there may be a great many, but I turn it upon them, and that with great Reaſon, with Submiſſion to your Lordſhip: Shew me any man (if you can) above a dozen years ago, that had not time allowed him to Plead; Ay but (ſay they) *Mr. Waterhouſe* an Ancient Clerk of the Crown-Office, that has been there theſe ſixty years, hath certified that this hath been the practice of all his time: My Lord, we that have been Converſant in the buſineſs of this Court, did all very well know *Mr. Waterhouſe* when he was here, and ſat in Court in the place of Sir *Samuel Aſtry*.

Sir *S. Aſtry*, No, Sir, It was in *Mr. Harcourt*'s place.

Mr. Pollixfen, Well, he executed a place here, and 'tis no matter whether he were Maſter of the Office or no; but I think we all knew him very well, he was a man as lame in his buſineſs as could be, for there are ſome men that will never do buſineſs well, let them be never ſo long at it; and he was as weak in the practice of the Court, and every thing elſe, as 'tis poſſible for one that has been bred in an Office, can be; and at this time he is grown ſo decreppit and ſuperannuated, that you may as well depend upon the Certificate of an old Woman, as any thing that he ſhall ſay in ſuch a Matter as this; he is now almoſt fourſcore years of Age, and has loſt that little Memory and Underſtanding he had, but if his Certificate muſt be depended upon, becauſe of his ſtanding in the Office; pray My Lord, let him come hither, and do you ask him what he has to ſay in this Matter.

Mr. Soll. Gen. Aye, that is very well indeed.

Mr. Pollixfen, Good *Mr. Sollicitor* ſpare us, certainly there needs not ſuch great haſt in this Matter, we are upon a buſineſs of very great Weight and Concernment, for you are now making a Law for the whole Kingdom in point of Practice, in Caſes of this Nature. We do ſay, indeed, that by the Reaſon of the Heat and Zeal of theſe laſt ten years, ſuch a Uſage has been introduced, but Sir *Samuel Aſtry* tells you, it was oppoſed, and I hope that neither I, nor the thing will be the worſe thought of, becauſe I oppoſed what I thought an unreaſonable and new Invention; My Lord, I know in the Caſe of the City of *London*, we had time to plead a whole Vacation after an Imparlance, and were not at all hurried on, as the King's Counſel would do in this Caſe; My Lord, if they can produce any Ancient Preſident for it, I will ſay no more, but there is no Caſe in Print in any of our Books that ever I read or can remember, that countenances ſuch an Opinion; a man by this means may looſe his juſt Defence, and he has no Remedy, nor will it ever be in his Power to retrieve it, for he may be brought on a ſuddain into Court upon a Warrant, and when he is here he ſhall be charged with an Information, and preſently he muſt Plead not Guilty, becauſe he has not time to prepare a Plea of any other Nature, let him have never ſo much other ſpecial Matter, or occaſion for it; if you pleaſe to let this Matter be examined what the Preſidents are, and what Age thoſe Precedents are, then perhaps your Lordſhip will get ſome ſatisfaction; but otherwiſe, if the bare Certificate of the Maſter of the Office is to be a Guide to the Court, what is Law, and what is not, we ſhall be in a very uncertain Condition, eſpecially when the Matter comes in the very face of it, a great deal of Unreaſonableneſs and Injuſtice. They on the other ſide will argue that is not more unreaſonable then the practice in the Caſe of Treaſon, and Fellony, where Perſons are compelled to Plead inſtantly. But under favour, My Lord, there is no Compariſon between this Caſe and that, though I know it was always thought a hardſhip and defect in our Law, that a perſon ſhould be denied time to plead in caſe of Life and Death, except he can ſhew ſome ſpecial Matter of Law that he has to Plead, and then he has always time allowed him to put it into Form; And I could never think there was any Reaſon to be given for it, but becauſe the common Defences of Fellons would be little Shifts and Arts, which would deſtroy proceedings, and make them tedious, and that would be an Encouragement to People to commit Fellony; and beſide there is a Truſt which the Law repoſes in the Court in Ca-

pital Caſes, to take care that theſe Men ſhould not ſuffer upon any little Tricks in Law; but if you come below Treaſon and Fellony, the Law puts no ſuch hardſhip upon the Defendant, nor repoſes ſuch a ſpecial Truſt in the Court; but a man may plead any thing he has to plead; And can any man plead before he ſees what he is to plead to? and ſhall the Law allow him Council to prepare his Plea, and not allow him time to conſult with that Council about it? Theſe are things My Lord, that truly, to me ſeems unreaſonable: But as to the Practice and courſe of the Court, I pray your Lordſhip to give Order, that the Precedents may be ſearched, that you may know what the ancient Practice was.

Mr. Finch. Whether you will grant an Imparlance now or no, yet I hope however, you will think fit to give My Lords the Biſhops time to plead.

Lord Chief Juſtice. But *Mr. Finch*, we have had a Certificate from Sir *Samuel Aſtry*, which truly weighs a great deal with me, he tells you the Practice has been ſo ever ſince he came here, and that *Mr. Waterhouſe* told him, that it had been ſo all his time, which is ſixty years.

Mr. Pollixfen. My Lord, there are Perſons here that will upon their Oaths declare, That *Mr. Waterhouſe* has often told them the Practice was otherwiſe; even in his time, and afterwards a long time before this new way of Proceeding came in.

Mr. Ince. My Lord, if I might have liberty to ſpeak, I can ſay *Mr. Waterhouſe* has told me.

Lord Chief Juſtice. Pray be quiet *Mr. Ince.*

Mr. Juſtice Allybone. But pray *Mr. Pollixfen* give me leave to mind you, how the Evidence ſtands againſt you, the Objections are, that this has been a Practice but for twelve years laſt paſt; if that be true, I think it goes a great way, for the practice of twelve years is Preſident enough, *Primâ Facie*, that ſuch is the practice, For how ſhall we come to the knowledge of the practice, but from our Officer Sir *Samuel Aſtry*, who has been here Examined? and he tells you, that upon his coming into the Office, when it could not be ſo doubtful as now (it ſeems) it is, he took Inſtructions from *Mr. Waterhouſe*; I allow you 'tis but his Certificate, but that muſt go a great way with the Court.

Sir *Ro. Sawyer.* Such a practice as this has been always very rare in Informations for Miſdemeanours; and they bring you nothing of any Preſident older then Sir *Samuel Aſtry*'s time.

Mr. Finch. Pray My Lord, give me leave to vary the Queſtion, I do not now make it a Queſtion, whether your Lordſhips ſhould grant My Lords the Biſhops an Imparlance, but whether you would think fit to look into the Courſe of the Court before that time, that Sir *Samuel Aſtry* ſpeaks of, and take time to conſider, and ſearch into Preſidents.

Mr. J. Allybone. Do you *Mr. Finch* give us any one Reaſon or Preſident, that may make us doubt, whether this be the Courſe of the Court or no? And you could not but be aware of this before, and therefore ſhould have come prepared to make out your Objection.

Mr. Finch. Mr. *Pollixfen* and the reſt of the Practicers in My Lord *Hales*'s time will tell you, that the Courſe was otherwiſe in his time; Sir *Samuel Aſtry* indeed tells you, it has been ſo ſince his time; but this was one of the Points (it ſeems) that he was ignorant of, which made him inquire of *Mr. Waterhouſe*, ſo doubtful was this Practice.

Sir *Samuel Aſtry.* I was an Attender upon this Court before I came into this Office, but it was in another place on the other ſide of the Court; and therefore was not concerned ſo much to know what was the Courſe on this ſide, till I came into this Office.

Mr. Sol. Gen. Theſe Gentlemen differ among themſelves, one would have an Imparlance, the other only time to plead, I believe truly they cannot tell well what they would have, I pray the Rules of the Court may be kept to.

Sir *Sam. Aſtry.* Here are two Clerks that ſit by me, that have been a long time in the Office, Mr. *Harcourt* my Secondary, and the Clerk of the Rules; I pray they may be asked their knowledge of this matter.

Mr. Soll. Gen. Certainly theſe Gentlemen think they have a Priviledge above all other people, that they muſt not be ſubject to the ſame Rules, as others are, we on our parts have taken all the Methods that we could to make this matter ma-

manifeſt, and what is it that theſe Gentlemen now propoſe? They pray you to take time to conſider, but have they uſed the right means of creating a jealouſie or ſuſpicion in the Court, that the Courſe is otherwiſe, they can give no inſtance of it, and all they ſay is, 'tis a Negative, that this is not the Courſe of the Court, but the Imparlance that they beg is in the Affirmative, ſurely that they can find proof of, if it be ſo: As for my Lord *Holly*'s Caſe, that is with us, and not againſt us; let *Mr. Pollixfen* ſhew that ever any one of the Men that were brought into Court in Cuſtody either had time to Plead, or an Imparlance.

L. C. J. Sir *Samuel Aſtry* ſays he has given you his Opinion, and here are two other Clerks of the Office that he refers himſelf to, are you willing that they ſhould be asked?

Mr. Ser. Pemberton. Yes my Lord, with all our hearts.

L. C. J. Mr. Harcourt, How long have you been a Clerk in the Crown-Office?

Mr. Harcourt. About ſeventeen or eighteen years my Lord.

L. C. J. How long have you known the practice of the Court in this matter, and what is it?

Mr. Harcourt. I cannot charge my ſelf ſo with Particulars from the time of my coming into the Office, but for theſe ten or twelve years paſt (I remember) it has been as the King's Council preſſed, and as Sir *Samuel Aſtry* has declared.

L. C. J. What ſay you *Mr. Sillyard,* How long have you known the Crown-Office?

Mr. Sillyard. I have been a Clerk here about thirty years.

L. C. J. Well, and how has the practice been all your time?

Mr. Sillyard. I have not ſat here as Clerk of the Rules but a little while, but ſince I have ſat here, I have always obſerved it to be the Practice, that one that comes in Cuſtody ſhould Plead immediately, it was a thing heretofore that did not ſo often happen, as it hath done here of late, therefore I cannot ſo well ſpeak to it; but it hath fallen out frequently within ſome years laſt paſt, and that hath been the conſtant Courſe.

Sir *Samuel Aſtry.* When you firſt came to be *Attorney General,* Sir *Robert Sawyer,* I am ſure it was ſo.

Mr. Att. Gen. Pray let me ask you *Mr. Sillyard,* you ſay, you have known the Office thirty years, When you firſt came to the Office, were Informations as frequent as they are now, and have been of late?

Mr. Sol. Gen. It was ſo in the Caſe of *Mr. Hampden,* when you were *Attorney General* Sir *Robert Sawyer,* he was forced to Plead immediately to an Indictment, for a Crime that perhaps you will ſay was near upon Treaſon.

Sir Rob. Sawyer. Yes truly, it wanted but one Witneſs, that was all.

Mr. Sol. Gen. But yet the Indictment was only for a Miſdemeanour, and there we ſtrugled and debated the Matter, but were forced to give it over, becauſe the courſe of the Court was againſt us, ſo it has been by the unqueſtionable Teſtimony of Sir *Samuel Aſtry* for theſe twelve years laſt paſt, and in thoſe twelve years we have had many changes, perhaps there may have been twelve Chief Juſtices, and they have all affirmed it, and if I then make it out, that in all theſe Judges times that are within our Remembrance it has gone thus, then there are enough of Precedents in the Matter.

Sir *Rob. Sawyer.* But my Lord, I deſire to know, whether that were the Ancient Courſe *Mr. Sollicitor?*

Mr. Sol. Gen. They that make the Objection ought to prove it; but I will name Sir *Robert Sawyer* another Caſe, and that is the Caſe of Sir *Samuel Barnardiſton,* which was the Caſe of a Libel too, he was forced to plead immediately, and it coſt him 10000 *l.* Fine.

L. C. J. Well, Gentlemen, have you done on either ſide?

Mr. S. Pemberton. If your Lordſhip will pleaſe to give us time till to morrow Morning, we will come hither by Rule of Court, and bring you ſome Certificates and Affidavits, or elſe ſome Precedents that we hope will ſatisfie your Lordſhip in this Matter.

L. C. J. No Brother, we cannot do that, the Queſtion is what the Courſe of the Court is, we have had an Account of that from Sir *Samuel Aſtry,* for

twelve years of his own Knowledge, and from *Mr. Waterhouſe* by him for ſixty years; but for *Mr. Waterhouſe* they except againſt him, and ſay he was a perſon that was always lazy and did not ſo well underſtand his buſineſs, and now is ſuperannuated, that is ſaid, but is but *gratis dictum*, perhaps it may be ſo, perhaps not; and they have offered to Examine *Mr. Ince* about ſome Opinion that he has had from this *Mr. Waterhouſe*; it may be he may have asked him ſome Queſtion that may lead to it, and he may have given ſome ſlight Anſwer, but then here are theſe two perſons *Mr. Harcourt*, and *Mr. Sillyard*, and the one has been a Clerk theſe ſixteen or ſeventeen years, and the other has known the Office thirty years; though there were not heretofore ſo many Informations of this Nature and Kind as now of late, but ſtill they ſay, that a perſon that comes in upon a Commitment, or a Recognizance, ſhall never have any Imparlance.

Mr. Sol. Gen. Can they give any one Inſtance that has any the leaſt ſhaddow to the contrary?

Mr. Pollixfen. My Lord, if we had time, we hope we ſhould be able to ſatisfie you in this Matter.

Mr. Sol. Gen. You have had time enough to prepare your ſelves for this Queſtion, if you had thought you could do any good in it.

L. C. J. Would the Courſe of the Court be otherwiſe to Morrow then it is to Day, we have taken all the Care we can to be ſatisfied in this Matter, and we will take care that the Lords the Biſhops ſhall have all Juſtice done them, nay, they ſhall have all the Favour by my conſent that can be ſhewn them, without doing wrong to my Maſter the *King*, but truly I cannot depart from the Courſe of the Court in this Matter, if the King's Council preſs it.

Mr. Att. Gen. My Lord, we muſt pray your Judgment in it, and your Direction, that they may plead.

L. C. J. Truly I think they muſt Plead to the Information.

Mr. Att. Gen. Sir *Samuel Aſtry*, pray ask My Lords whether they be Guilty, or Not Guilty.

Then his Grace the Lord Archbiſhop of Canterbury *ſtood up, and offered a Paper to the Court.*

Archbiſh. of Cant. My Lord, I tender here a ſhort Plea, (a very ſhort one,) on behalf of my ſelf and my Brethren the other Defendants; and I humbly deſire the Court will admit of this Plea.

L. C. J. If it pleaſe your Grace, it ſhould have been in Parchment.

Mr. Sol. Gen. What is that my Lord offers to the Court?

L. C. J. We will ſee what it is preſently, *Mr. Sollicitor.*

Biſh. of Peter. I pray My Lord, that the Plea may be Read.

M. Sol. Gen. But not received.

Mr. Att. Gen. No, we deſire to know what it is firſt?

Sir *Rob. Sawyer. Mr. Attorney*, if they will Plead, the Court ſure is obliged to receive it.

L. C. J. If it is a Plea your Grace will ſtand by it?

L. Archbiſh. of Cant. We will all ſtand by it, my Lord, it is ſubſcribed by our Council, and we pray it may be admitted by the Court.

Mr. S. Pemb. I hope the Court will not deny to receive a ſpecial Plea, if we offer one.

L. C. J. Brother, let us hear what it is?

Mr. Sol. Gen. Read it if you pleaſe, but not receive it.

Clerk Reads the Plea; which in Engliſh is thus:

The BISHOPS PLEA.

AND *the aforeſaid* William *Archbiſhop of* Canterbury, William *Biſhop of St.* Aſaph, Francis *Biſhop of* Ely, John *Biſhop of* Chicheſter, Thomas *Biſhop of* Bath *and* Wells, Thomas *Biſhop of* Peterburgh, *and* Jonathan *Biſhop of* Briſtol, *being preſent here in Court in their own Perſons, pray Oyer of the Information aforeſaid; and it is Read to them, which being Read and heard by them the ſaid Archbiſhop, and Biſhops: The ſaid Archbiſhop and Biſhops ſay, that they are Peers of this*

this Kingdom of England, *and Lords of Parliament, and each of them is one of the Peers of this Kingdom of* England, *and a Lord of the Parliament, and that they being (as before is manifeſt) Peers of this Kingdom of* England, *and Lords of Parliament, ought not to be compelled to anſwer inſtantly for the Miſdemeanour aforeſaid, mentioned in the ſaid Information exhibited here againſt them in this Court; but they ought to be required to appear by due Proceſs in Law iſſuing out of this Court hereupon the Information aforeſaid, and upon their Appearance to have a Copy of the ſaid Information exhibited againſt them, and reaſonable time to imparl thereupon, and to adviſe with Council Learned in the Law, concerning their Defence in that behalf, before they be compelled to anſwer the ſaid Information*; Whereupon, *for that the ſaid Archbiſhop, and Biſhops were Impriſoned, and by Writ of our Lord the King, of* Habeas Corpus, *directed to the Lieutenant of the Tower of* London, *are now brought here in Cuſtody, without any Proceſs upon the Information aforeſaid iſſued againſt them, and without having any Copy of the ſaid Information, or any time given them to imparl, or be adviſed*; They pray Judgment, *and the Priviledge of Peers of this Kingdom, in this Caſe to be allowed them; and that They the ſaid Archbiſhop, and Biſhops, may not be compelled inſtantly to anſwer the Information aforeſaid*, &c.

Rob. Sawyer.
Hen. Finch.
Hen. Pollixfen.

Mr. Att. Gen. My Lord, with your Lordſhip's favour, this in an ordinary Perſon's Caſe, would perhaps be thought not fair dealing, or that which (it being in the Caſe of theſe Reverend Prelates) I ſhall not now name; to make all this Debate and Stir in a Point of this nature, to take the Judgment of the Court after three or four hours arguing, and when the Opinion of the Court has been delivered, then to put in a Plea to the Juriſdiction of the Court,——

Sir Rob. Sawyer, It is no ſuch Plea.

Mr. Att. Gen. It is ſo in effect, but certainly it is ſuch an Irregularity, and ſuch an unfair way of Proceeding, as would not be endured in an ordinary Caſe, and I hope you will give ſo little countenance to it, as to reject it, and make them Plead according to the uſual courſe and way of proceedings; certainly a Plea of this nature, after ſo long an Argument, would be reckoned nothing but a trick.

Mr. Serj. Pemb. We hope the Court and you are not of one mind Mr. *Attorney* in this matter, we deſire the Court to receive the Plea.

Mr. Att. Gen. With ſubmiſſion, the Court is not bound to receive Pleas, that are put in purely for delay, as this is; for the Judgment of the Court has been already given in the very matter of this Plea; and for rejecting a Plea, it is done every day, if a Man puts in a mere trifling dilatory Plea, the Court may reject it; Does this Plea contain any thing in it, but what has been argued and debated *pro & con*, and ſetled by the Court already? If they will put in any Plea in chief they may, but ſuch a Plea as this, I hope ſhall not have ſo much countenance, as to be receiv'd by the Court.

Mr. Pollixfen. Do you Demur to it, if you pleaſe *Mr. Attorney*, we will joyn in Demurrer with you.

Mr. Att. Gen. No, there will be no need of that.

Mr. Sol. Gen. Surely the Court will never give ſo much Countenance to it, as to receive it.

Mr. Finch. If you will pleaſe either to Reply or Demur *Mr. Sollicitor*, we are here to maintain the Plea.

Mr. Soll. Gen. If you were here you would ſay the ſame thing that we do; My Lord, this Plea is, That my Lord the Biſhops are not bound to Plead inſtantly; ſo that 'tis not a Queſtion, Whether they ought to Anſwer, or not to Anſwer, but whether they ought to Anſwer immediately, and what do they ſay more? They would have an Imparlance, and time to conſult with their Councel what they ſhall Plead, which is all but one and the ſame thing; and what is the reaſon they give for this? They induce it thus, Theſe Noble Perſons are Peers of the Realm, and ſo ought not to be compelled to Plead immediately; this, if I miſtake not, is the ſum of their Plea. Now pray my Lord,

what

what ſort of Plea is this? It is not a Plea to the Juriſdiction of the Court, tho' it do in a ſort decline the Juſtice of the Court? Is it a Plea in Abatement? No, it is not, for it is only to gain time, and do they now offer any thing more for themſelves, than what was ſaid by their Council before? Only, That we are Peers of the Realm, and that ſuch is the Priviledge of Peers, that they ought to have an Imparlance, and time to Plead, and that they ought not to anſwer preſently: My Lord, this Matter hath been long agitated in the Court already, your Lordſhip, and the Court have given your Judgments, and we know your Lordſhip, and the Court will not admit of Tricks to delay the Kings Cauſes, we all know the Term is a ſhort Term, and what I ſaid in the beginning upon this matter, I ſay again, it is the Intereſt, and for the Honour of my Lords the Biſhops (if they underſtand their own Intereſt, and value their Honour) to have this Cauſe tryed as ſoon as may be; but this trifling and tricking is only for delay: For what iſſue can be taken upon this Plea? Certainly none; And if we ſhould Demurr, what will be the end of that? But only to get time to ſlip over the Term. If there were any thing worth the conſidering in this Plea, and that had not been already debated and ſetled, then it might concern us to give ſome Anſwer to it; but we have ſpent three hours (by my Watch) in the Diſpute, and the Matter having been over-ruled already, it is time to have an end of it; ſure the Court will never be ſo treated by theſe Perſons, that are of Councel for my Lords the Biſhops, for it cannot be thought that my Lords the Biſhops do it of themſelves; and whether the Court will be ſo ſerved, we ſubmit to your Lordſhip. Certainly you will not receive ſuch a Plea as this, eſpecially it being in Paper, you will never countenance ſuch a Practice, ſo far as to give theſe Lords time to triſle with the Court; if any ſuch thing as a Plea be tender'd to the Court, it ought to be in Parchment, and if they would have an Imparlance, there ought to have been an entry of a *Petit Licentiam inter loquendi* upon the Roll, but not ſuch a Plea as this, for this in effect is no more then deſiring an Imparlance, which if it be granted of courſe, upon ſuch a Prayer entred upon the Roll, you take it of courſe; but if it be not of courſe, you cannot come in by way of Plea, it muſt be by ſuggeſtion upon the Roll, and a *Conceditur* entred, if this be admitted as a Precedent, every Man hereafter that comes in upon an Information, will take advantage of it, and plead ſuch a Plea as this, and if you grant an Imparlance in this Caſe upon this Plea, you muſt grant an Imparlance in every Caſe; certainly the Law is not to be altered, the Methods of Proceedings ought to be the ſame in every Caſe: And I hope you will not make a particular Rule in the Caſe of my Lords the Biſhops, without a ſpecial Reaſon for it.

Mr. Serj. Pemb. We put in this Plea, my Lord, and are ready to abide by it, and we ſay, that according to the courſe of the Court, it ought to be received.

Mr. Att. Gen. No, but good Mr. *Serjeant*, 'tis in the diſcretion of the Court, whether they will receive it or not, for the matter has been in debate already, and has receiv'd a determination, the Court has over-ruled them in this very Point already, and there is no more in this Plea, than was in the Argument before, and therefore it ought to be rejected as a frivolous Plea.

Mr. Soll. Gen. Here is a Plea offered in Writing, and in Paper, the Court ſees what it is, and I hope you will give no countenance to it.

Mr. Pollixfen, I do hope my Lord, you will not judge this as a frivolous Plea, I think our Caſe is ſuch, that you will not do that, if you think fit you may over-rule it, but I hope you will not refuſe it.

Mr. Soll. Gen. The Court will certainly reject a frivolous Plea, and they may do it.

Mr. Pollixfen, But Mr. *Solliciter,* I hope the Court will conſider of it, whether it be a frivolous Plea or not, it is true, there has been a Debate about the courſe of the Court, and there has been an Examination of the Clerk of the Office, and the Court has gone upon his Certificate, but yet ſtill perhaps it may remain in doubt, and it being a Queſtion of ſuch a conſequence as this, it may very well deſerve the Court's Conſideration; there never was a Judicial Settlement of it (that I know of yet) nor do I know any way of having it ſatisfactorily ſetled, but by the Judgment of the Court entred upon Record; here we offer a Plea

that

that contains the matter in debate, and this Plea will appear upon Record, and if upon conſideration of the Plea your Lordſhip ſhall think fit to over-rule it, and be of Opinion againſt the Plea, then will you by your Reſolution in a Judicial way, ſettle the Queſtion that has hitherto been in Controverſy.

L. C. J. Mr. Pollixfen, I would ask you whether the Council have dealt ingeniouſly with the Court or no in this matter; after four hours debate, and the Opinion of the Court delivered, to come and ſum up all the Arguments in ſuch a Plea as this, and ſo put us upon debating it over again.

Mr. Pollixfen. My Lord, certainly this has been done before, without Offence, after we had moved for a thing which was denied upon Motion, it is no ſuch great diſ-reſpect to the Court (with ſubmiſſion) to put the ſame Matter into a Plea, for the Judicial Opinion of the Court.

Sir *Ro. Sawyer.* That without all Queſtion has been done a great many times.

Mr. Sol. Gen. How many times have you been accuſed of playing Tricks Sir *Robert Sawyer.*

Sir *Rob. Sawyer.* Not ſo many as you, *Mr. Sollicitor.*

Mr. Sol. Gen. I don't ask it as if I queſtioned it, for I aſſure you I don't doubt it of your part at all.

L. C. J. Pray Gentlemen don't fall out with one another at the Bar, we have had time enough ſpent already.

Mr. Pollixfen. Truly, My Lord, I would not trick with the Court in any Caſe, nor on the other ſide would I be wanting to Adviſe and do for my Client, what I am able and lawfully may; we have laboured all we could to get time for my Lords the Biſhops to Imparle to this Information, and we have been the more earneſt in it, becauſe it concerns us, who attends this Bar, to take what Care we can, that the Courſe of the Court may be obſerved; but as for this Matter, we ſuppoſe this Practice of the Court is not in Law a good Practice; Now what way in the World has any man to bring this ſo in queſtion, as to have a Judicial Reſolution of the Court about it, but by ſuch a Plea? We take it, that it is uſual and legal for us to have an Imparlance, and a man would Imparle, but the Court upon Motion refuſed to give him an Imparlance; Is it not (think you) very fit for the party to have this Judicially entered upon Record? where all this Matter will appear, and the party may be relieved by writ of Error, if the Judgment of the Court ſhould be wrong; but truly I cannot ſee how the Court can refuſe the Plea, for if ſo be a Plea be pleaded, they have their liberty to Anſwer it on the other ſide by a Replication, or elſe to Demur, and the Judgment of the Court may be had upon it one way or other, but the Court will never go about to hinder any man from pleading where he may plead by Law; here is a Plea put in, and the Court ſure will take no notice what is the Matter of the Plea, till the other party have either replied or demurred; the ſame thing may happen in any other Plea that is pleaded, and the party will be without Remedy upon a writ of Error, becauſe the Plea being Rejected, there does nothing appear upon Record; truly for the Court to reject and refuſe this Plea, would be as hard as the refuſing of the Imparlance, and we know no way we have to help our ſelves.

Mr. Sol. Gen. You might have entered your Suggeſtion for an Imparlance upon the Roll, and then it would have appeared upon Record, and if the Court had unjuſtly denied it you, you would have had the benefit of that Suggeſtion elſewhere: Truly, My Lord, I think if any thing be tricking, this is, for it is plainly ill pleading.

Mr. Finch. Then pray demur to it.

Mr. Sol. Gen. No Sir, 'tis Fencing with the Court, and that the Court won't ſuffer, it is only to delay, and if we ſhould demur, then there muſt be time for Arguing; and what is the Queſtion after all, but whether you would be of the ſame Opinion to Morrow, that you are to Day.

Sir *Rob. Sawyer.* I would put *Mr. Sollicitor* in mind of *Fitz. Harris*'s Caſe, which he knows very well, he put it in a Plea, and we for the King deſired it might not be received, but the Court gave him time to put it into Form, and I was fain to joyn in Demurrer preſently, and ſo may theſe Gentlemen do if they pleaſe.

Mr. Soll. Gen. Yes Sir *Robert Sawyer*, I do know the Caſe of *Fitz. Harris* very well, I was aſſigned of Councel by the Court for him, we were four of us, and there was a Plea put in, but no ſuch Plea as this, there was an Indictment of High Treaſon againſt him, in which Caſe it is agreed on all hands, that the party muſt anſwer preſently, but becauſe he ſuggeſted here at the Bar, (ſays he) I have Matter to plead to the Juriſdiction of the Court, and ſhewed what it was, I was Impeached before the Lords in Parliament for Treaſon, for the ſame Matter of which I am here Accuſed: The Court did give him time to put this into Form, and we were aſſigned his Council to draw it up for him, and accordingly we did put that Matter into a Plea, that we were here Indicted for one and the ſame Treaſon, for which we were Impeached in Parliament, and that that Impeachment was ſtill depending, and ſo we reſted in the Judgment of the Court, whether we ſhould be put to Anſwer it here; this was a Plea that carried ſomething of weight in it, and not ſuch a trifling one as this. It is true, Sir *Robert Sawyer* who was then *Attorney General* did preſs the Court to over-rule it immediately, but it being a matter of ſome Importance, the Court would not do that, but had it argued ſolemnly by Council on both ſides, and at laſt there was the Opinion of three Judges againſt one that the Plea was no good Plea, But what is that to ſuch a trifling Plea as this?

Mr. Att. Gen. Pray my Lord favour me a few words about that Caſe of *Mr. Fitz. Harris*, it is true, there was a Plea put in, and it is true alſo, that that which brought that Plea to be argued, was the Demurrer that was put in by Sir *Robert Sawyer*, who was ſo zealous and haſty in the matter, that becauſe the Court did not preſently over-rule the Plea, as he deſired, he immediately Demurred, before the reſt of the King's Council could offer at any thing about it; and thereupon it was put to the Judgment of the Court, and no doubt muſt be argued, and ſpoke to on both ſides; but where Pleas are really in abuſe of the Court, the Court never gives any Countenance to them: Nay, truly I have known another Courſe taken, I am unwilling to mention a Caſe that hapned much about that time too in this Court, becauſe of that regard I have to my Lords the Biſhops, but Sir *Robert Sawyer* remembers it very well, I am ſure; it was the Caſe of one *Whitaker*, who for a thing like this putting in a trifling Plea, not only had his Plea rejected, but ſomething elſe was ordered, I could ſhew the Precedent, but that I am more tender than to preſs it in this Caſe, becauſe there the Court ordered an Attachment to go againſt him, but I will put theſe Gentlemen in mind of another Caſe, and that is the Caſe of a Peer too, it is the Caſe of my Lord *Delameere*, which they cannot but remember, it being in the higheſt Caſe, a Caſe of Treaſon, when my Lord *Delameere* was Arraigned and to be Tryed for High Treaſon, he put in a Plea before my Lord *Chancellor*, who was then *High Steward*, and Sir *Robert Sawyer* who was then *Attorney General*, prayed the Lord *Steward*, and the Peers to reject it, and the Court did reject it, (as we hope the Court will do this) and would never ſo far delay Juſtice as to admit of a Plea that carried no Colour in it, and there was no Demurrer put into the Plea, but it was abſolutely refuſed: My Lord, in this Caſe we have had the Judgment of the Court already, and therefore we muſt now deſire that this Plea may be rejected.

Mr. Soll. Gen. My Lord, we have now gone out of the way far enough already; it is time for us to return, and bring the Caſe into its due methods. We pray your Lordſhip to reject this Plea.

Sir Rob. Sawyer. My Lord, we are in your Judgment, whether you will receive this Plea or not.

L. C. J. You ſhall have my Judgment preſently; but my Brothers are to ſpeak firſt.

Mr. J. Allybone. Mr. *Pollixfen* makes it a Queſtion, whether this Plea may be rejected or not, or whether it ought to be received, and the Court give their Judgment upon it.

Mr. Juſt. Powell. Truly I do not know whether the Court can reject this, as a frivolous Plea.

L. C. J. Surely we may and frequently do.

Mr. Att. Gen. You do it every day, it's a frequent Motion; if a frivolous Plea

Plea be put in, before it be entred upon Record as a Plea, the Court may refuſe it, if they ſee cauſe.

Mr. J. Allybone. Truly if it may be, this appears to me a very frivolous Plea.

Mr. Juſt. Powell. I do not know how the Court can reject any Plea that the party will put in, if he will ſtand by it, as they ſay they will here; and I cannot think this a frivolous Plea, it concerning the priviledge of Peers, and Lords of Parliament.

Mr. J. Allybone. Brother *Powell*, I would be as tender of the Priviledges of Parliament, and ſpeak with as much reſpect of the Priviledges of the Peerage, as any body elſe; but for the matter of the Plea, truly it appears to me, that the Peers are named in it only for faſhion ſake, and it is frivolous.

Mr. Juſt. Powell. The matter of the Plea, except only their being ſaid to be Peers and Lords of Parliament, was ſpoke to before, but it was only *obiter*, and by way of motion; but now it may come before us for our Judicial Determination.

Mr. J. Allybone. Pray let the Plea be read again. *(Which was done.)*

Mr. Juſt. Allybone. This Plea is no more but that which has been denied already upon ſolemn debate, and if it be in the power of the Court to reject any Plea, ſurely we ought to reject this. Indeed I know not what power we have to reject a Plea; but if we have power, this ought to be rejected.

Mr. Juſt. Powell. I declare my Opinion, I am for receiving the Plea, and conſidering of it.

Mr. Juſt. Holloway. I think as this caſe is, this Plea ought not to be received, but rejected, becauſe 'tis no more than what has been denied already. I am not aſhamed to ſay, That I ſhould be very glad and ready to do all things that are conſiſtent with my Duty, to ſhew reſpects to my Lords the Biſhops, ſome of whom are my particular Friends; but I am upon my Oath, and muſt go according to the courſe of Law.

L. C. J. We have asked and informed our ſelves from the Bar, whether we may or can reject a Plea, and truly what they have ſaid, hath ſatisfied me that we may, if the Plea be frivolous; and this being a Plea that contains no more than what has been over-ruled already, after hearing what could be ſaid on both ſides, I think the Court is not bound to receive the Plea, but may reject it, and my Lords the Biſhops muſt plead over.

Mr. Att. Gen. We pray they may plead in chief.

Clerk. My Lord Archbiſhop of *Canterbury*, is your Grace guilty of the matter charged upon you in this Information, or not guilty?

A. B. C. Not guilty.

Clerk. My Lord Biſhop of St. *Aſaph*, is your Lordſhip guilty of the matter charged upon you in this Information, or not guilty?

Biſh. of St. Aſaph. Not guilty.

Clerk. My Lord Biſhop of *Ely*, is your Lordſhip guilty of the matter charged upon you in this Information, or not guilty?

Biſh. of Ely. Not guilty.

Clerk. My Lord Biſhop of *Chicheſter*, is your Lordſhip guilty of the matter charged upon you in this Information, or not guilty?

Biſh. of Chicheſt. Not guilty.

Clerk. My Lord Biſhop of *Bath* and *Wells*, is your Lordſhip guilty of the matter charged upon you in this Information, or not guilty?

Biſh. of Bath & Wells. Not guilty.

Clerk. My Lord Biſhop of *Peterborough*, is your Lordſhip guilty of the matter charged upon you in this Information, or not guilty?

Biſh. of Peterborough. Not guilty.

Clerk. My Lord Biſhop of *Briſtol*, is your Lordſhip guilty of the matter charged upon you in this Information, or not guilty?

Biſh. of Briſtol. Not guilty.

Mr. Att. Gen. My Lord, I pray the Clerk may joyn Iſſue on the behalf of the King, that ſo we may come to Tryal; and we would have theſe Gentlemen take notice, that we intend to try this Cauſe on this day fortnight, and we pray liberty of the Court, that we may try it at Bar.

L. C. J. Are you not too haſty in that Motion, Mr. Attorney?

Mr. Att. Gen. My Lord, we ſhould indeed make it the Motion of another day;

day; but we do now tell them this *exclandami*, becauſe my Lords the Biſhops are now here, and will I ſuppoſe take notice that we do intend to move it another day.

Mr. Soll. Gen. We now give them notice, that we intend to move.

Sir Rob. Sawyer. For that you need not trouble your ſelves; we are very deſirous it ſhould be tryed at Bar, and that as ſoon as you pleaſe.

Mr. Att. Gen. Well then you take notice it will be tryed this day fortnight.

L. C. J. Well, what ſhall we do with my Lords the Biſhops?

Mr. Att. Gen. They are baylable, no queſtion of it, my Lord, if they pleaſe.

L. C. J. Then, my Lords, we are ready to bail you, if you pleaſe.

Sir Rob. Sawyer. We deſire your Lordſhip would be pleaſed to take their own Recognizance.

L. C. J. What ſay you, Mr. Attorney? I think that may do well enough.

Mr. Att. Gen. My Lord, with all my heart, we will do it.

L. C. J. In what Penalty ſhall we take it?

Mr. Att. Gen. A 1000 *l.* I think my Lord his Grace, and 500 *l.* apiece the reſt.

Sir Rob. Sawyer. What neceſſity is there for ſo much?

Mr. Att. Gen. Look you, Sir *Robert Sawyer*, to ſhew you that we do inſiſt upon nothing that ſhall look like hardſhip, what my Lords have been pleaſed to offer, concerning taking their own Recognizance, we agree to, and what ſums the Court pleaſes.

Mr. Soll. Gen. It is all one to us, we leave it wholly to the Court.

Sir Rob. Sawyer. Only I have one thing more to beg of your Lordſhip on the behalf of my Lords the Biſhops, that you will pleaſe to order, that in the Return of the Jury there may be forty eight returned.

Mr. Att. Gen. I tell you what we will do, Sir *Samuel Aſtry* ſhall have the Freeholders Book, if you pleaſe, and ſhall return twenty four.

Sir Rob. Sawyer. Eight and forty has been always the courſe, when the Jury is returned by Sir *Samuel Aſtry*.

Mr. Soll. Gen. My Lord, I pray the Officer may return the Jury, according as is uſual in Caſes of this nature.

Mr. Att. Gen. You do admit of a Tryal at Bar, Gentlemen?

Sir Rob. Sawyer. Yes, and try it when you will.

L. C. J. They ſay it ſhall be this day fortnight, and let there be a Jury according to the uſual courſe.

Sir Rob. Sawyer. We pray it may be in the preſence of the Attorneys or Sollicitors on both ſides.

L. C. J. What is the uſual courſe, Sir *Samuel Aſtry*? Do you uſe to return twenty four, or forty eight, and then ſtrike out twelve a piece, which I perceive they deſire for the Defendants?

Sir Sam. Aſtry. My Lord, the courſe is both ways, and then it may be, as your Lordſhip and the Court will pleaſe to order it.

L. C. J. Then take forty eight, that is the faireſt.

Mr. Att. Gen. We agree to it; we deſire nothing but a fair Jury.

Sir Rob. Sawyer. Nor we neither, try it when you will.

L. C. J. Take a Recognizance of his Grace my Lord of *Canterbury* in 200 *l.* and the reſt of my Lords in 100 *l.* a piece.

Mr. Att. Gen. What your Lordſhip pleaſes for that, we ſubmit to it.

Clerk. My Lord of *Canterbury*, your Grace acknowledges to owe unto our Soveraign Lord the King, the ſum of 200 *l.* upon condition that your Grace ſhall appear in this Court on this day fortnight, and ſo from day to day, till you ſhall be diſcharged by the Court, and not to depart without leave of the Court. Is your Grace contented?

A. B. C. I do acknowledge it.

Clerk. My Lord Biſhop of St. *Aſaph*, you acknowledge to owe unto our Soveraign Lord the King, the ſum of 100 *l.* upon condition that your Lordſhip ſhall appear in this Court on this day fortnight, and ſo from day to day, until you ſhall be diſcharged by the Court, and not to depart without leave of the Court. Is your Lordſhip contented?

Biſh. of St. Aſaph. I do acknowledge it.

The like Recognizances were taken of all the reſt of the Biſhops, and then the Court aroſe.

De

De Termino Sanctæ Trinitatis, Anno Regni Jacobi *Secundi Regis, Quarto,* In Banco Regis.

Die Veneris, viceſimo nono die Junii, 1688. *in eod' Term'.*

(Being the Feaſt of St. *PETER* and St. *PAUL.*)

Dominus Rex verſus Archiep. Cantuar. & al.

Sir *Robert Wright* Lord Chief Juſtice,
Mr Juſtice *Holloway*,
Mr. Juſtice *Powell*,
Mr. Juſtice *Allybone*.
} Judges.

Clerk. CRyer, make Proclamation thrice.

Cryer. O yes! O yes! O yes! Our Sovereign Lord the King ſtreightly charges and commands every one to keep ſilence, upon pain of Impriſonment.

Cl. of the Cr. Call the Defendents.

Cryer. William Lord Archbiſhop of *Canterbury*.

Archbiſh. Here.

Cryer. William Lord Biſhop of St. *Aſaph*.

Biſh. St. Aſaph. Here. (And ſo the reſt of the Biſhops were called, and anſwered ſeverally.)

Clerk. Gardez votres Challenges.---Swear Sir *Roger Langley*.

Cryer. Take the Book, Sir *Roger*. You ſhall well and truly try this Iſſue between our Sovereign Lord the King, and *William* Lord Archbiſhop of *Canterbury*, and others, according to your Evidence. So help you God.

The ſame Oath was adminiſtred to all the Jury, whoſe Names follow, (*viz.*)

Sir *Roger Langley*, Barr.
Sir *William Hill*, Knt.
Roger Jennings, Eſq;
Thomas Harriot, Eſq;
Jeoffery Nightingale, Eſq;
William Withers, Eſq;
William Avery, Eſq;
Thomas Auſtin, Eſq;
Nicholas Grice, Eſq;
Michael Arnold, Eſq;
Thomas Done, Eſq;
Richard Shoreditch, Eſq;

Clerk. You Gentlemen of the Jury who are ſworn, hearken to the Record; Sir *Thomas Powis*, Knight, His Majeſty's Attorney-General, has exhibited an Information, which does ſet forth as followeth:

ſſ. MEmorandum, That Sir *Thomas Powys*, Knt. Attorney-General of our Lord the King, who for our ſaid Lord the King in this behalf proſecutes, came here in his own perſon into the Court of our ſaid Lord the King, before the King himſelf at *Weſtminſter*, on *Friday* next after the morrow of the *Holy Trinity* in this Term; and, on the behalf of our ſaid Lord the King, giveth the Court here to underſtand, and be informed, That our ſaid Lord the King, out of his ſignal Clemency, and gracious intention towards his Subjects of his Kingdom of *England*, by his Royal Prerogative, on the fourth day of *April*, in the third year of the

Reign of our ſaid Lord the King, at *Weſtminſter* in the County of *Middleſex*, did publiſh his Royal Declaration, entituled, *His Majeſty's Gracious Declaration to all his Loving Subjects for Liberty of Conſcience*, bearing date the ſame day and year, ſealed with the Great Seal of *England*; in which Declaration is contained, JAMES *R. prout* in the firſt Declaration before recited.

And the ſaid Attorney-General of our ſaid Lord the King, on behalf of our ſaid Lord the King, further giveth the Court here to underſtand and be informed, That afterwards, to wit, on the twenty-ſeventh day of *April*, in the fourth year of the Reign of our ſaid Lord the King, at *Weſtminſter* aforeſaid, in the County of *Middleſex* aforeſaid, our ſaid Lord the King, out of his like Clemency, and gracious intention towards his Subjects of his Kingdom of *England*, by his Royal Prerogative, did publiſh his other Royal Declaration, entituled, *His Majeſty's Gracious Declaration*, bearing date the ſame day and year laſt mentioned, ſealed with his Great Seal of *England*; in which Declaration is contained, JAMES *R. Our Conduct has been ſuch*, &c. *prout* in the ſecond Declaration before recited.

Which ſaid Royal Declaration of our ſaid Lord the King laſt mentioned, our ſaid Lord the King afterwards, to wit, on the thirtieth day of *April*, in the fourth year of his Reign aforeſaid, at *Weſtminſter* aforeſaid, in the County of *Middleſex* aforeſaid, did cauſe to be printed and publiſhed throughout all *England*; and for the more ſolemn Declaring, Notification, and Manifeſtation of his Royal Grace, Favour, and Bounty towards all his Leige-people, ſpecified in the Declaration laſt mentioned, afterwards, to wit, on the fourth day of *May*, in the fourth year of his Reign, at *Weſtminſter* aforeſaid, in the County of *Middleſex* aforeſaid, our ſaid Lord the King in due manner did Order as followeth:

At the Court at *Whitehall* the Fourth of *May*, 1688.

By the King's moſt Excellent Majeſty, and the Lords of His Majeſty's moſt Honourable Privy-Council.

IT is this day Ordered by His Majeſty in Council, That His Majeſties late Gracious Declaration bearing date the Twenty Seventh of April *laſt, be read at the uſual time of Divine Service upon the Twentieth and Twenty Seventh of this Month, in all Churches and Chappels within the Cities of* London *and* Weſtminſter, *and Ten Miles thereabout: And upon the Third and Tenth of June next in all other Churches and Chappels throughout this Kingdom. And it is hereby further Ordered, That the Right Reverend the Biſhops cauſe the ſaid Declaration to be ſent and diſtributed throughout their ſeveral and reſpective Dioceſſes, to be read accordingly.*

Wm. Bridgeman.

And further, the ſaid Attorney-General of our ſaid Lord the King, on behalf of our ſaid Lord the King, giveth the Court here to underſtand and be informed; That after the making of the ſaid Order, to wit, on the eighteenth day of *May*, in the fourth year of the Reign of our ſaid Lord the King, at *Weſtminſter* aforeſaid, in the County of *Middleſex* aforeſaid, *William* Archbiſhop of *Canterbury*, of *Lambeth* in the County of *Surrey*; *William* Biſhop of St. *Aſaph*, of St. *Aſaph* in the County of *Flynt*; *Francis* Biſhop of *Ely*, of the Pariſh of St. *Andrew Holbourn* in the County of *Middleſex*; *John* Biſhop of *Chicheſter*, of *Chicheſter* in the County of *Suſſex*; *Thomas* Biſhop of *Bath* and *Wells*, of the City of *Wells* in the County of *Somerſet*; *Thomas* Biſhop of *Peterburgh*, of the Pariſh of St. *Andrew Holbourn* in the County of *Middleſex*; and *Jonathan* Biſhop of *Briſtol*, of the City of *Briſtol*, *did conſult and conſpire among themſelves to diminiſh the Regal Authority & Royal Prerogative, Power and Government of our ſaid Lord the King* in the premiſes, and to infringe and elude the ſaid Order; *and in proſecution and execution of the Conſpiracy aforeſaid*, They the ſaid *William* Archbiſhop of *Canterbury*, *William* Biſhop of St. *Aſaph*, *Francis* Biſhop of *Ely*, *John* Biſhop of *Chicheſter*, *Thomas* Biſhop of *Bath* and *Wells*. *Thomas* Biſhop of *Peterburgh*, and *Jonathan* Biſhop of *Briſtol*, on the ſaid eighteenth day of *May*, in the fourth year of the Reign of our ſaid Lord the King aforeſaid, *with Force and Arms, &c.* at *Weſtminſter* aforeſaid in the County of *Middleſex* aforeſaid, *falſly, unlawfully, maliciouſly, ſeditiouſly, and ſcandalouſly, did frame, compoſe, and write, and cauſed to be framed, compoſed, and written, a certain falſe, feigned, malicious, pernicious, and ſeditious Libel in writing, concerning our ſaid Lord the King, and his Royal Declaration and Order aforeſaid, (under-*

pretence

pretence of a Petition) and the ſame falſe, feigned, malicious, pernicious, and ſeditious Libel, by them the aforeſaid *William* Archbiſhop of *Canterbury*, *William* Biſhop of St. *Aſaph*, *Francis* Biſhop of *Ely*, *John* Biſhop of *Chicheſter*, *Thomas* Biſhop of *Bath* and *Wells*, *Thomas* Biſhop of *Peterburgh*, and *Jonathan* Biſhop of *Briſtol*, with their own hands reſpectively being ſubſcribed, on the day and year and in the place laſt mentioned, *in the preſence of our ſaid Lord the King, with Force and Arms*, &c. *did publiſh, and cauſe to be publiſhed*; in which ſaid falſe, feigned, malicious, pernicious and ſeditious Libel is contained, *The humble Petition*, &c. *prout* before in the Petition, to theſe words, [*reaſonable conſtruction*,] in manifeſt contempt of our ſaid Lord the King, and of the Laws of this Kingdom, to the evil example of all others in the like caſe offending, and againſt the Peace of our ſaid Lord the King, his Crown & Dignity, *&c.* Whereupon the ſaid Attorney-General of our ſaid Lord the King, on behalf of our ſaid Lord the King, prays the Advice of the Court here in the premiſes, and due Proceſs of Law to be made out againſt the aforeſaid *William* Archbiſhop of *Canterbury*, *William* Biſhop of St. *Aſaph*, *Francis* Biſhop of *Ely*, *John* Biſhop of *Chicheſter*, *Thomas* Biſhop of *Bath* and *Wells*, *Thomas* Biſhop of *Peterburgh*, and *Jonathan* Biſhop of *Briſtol*, in this behalf, to anſwer our ſaid Lord the King in and concerning the premiſes, *&c.*

T. Powys.
W. Williams.

To this Information the Defendents have pleaded *Not Guilty*, and for their Trial have put themſelves upon their Country, and his Majeſty's Attorney-General likewiſe, which Country you are: Your Charge is to enquire whether the Defendents, or any of them, are guilty of the matter contained in this Information that hath been read unto you, or Not Guilty: If you find them, or any of them, Guilty, you are to ſay ſo; and if you find them, or any of them, Not Guilty, you are to ſay ſo; and hear your Evidence. Cryer, make Proclamation.

Cryer. O yes! If any one will give Evidence on behalf of our Sovereign Lord the King againſt the Defendents of the matters whereof they are impeached, let them come forth, and they ſhall be heard.

Mr. *Wright*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, this is an Information exhibited by his Majeſty's Attorney-General againſt the moſt Reverend my Lord Archbiſhop of *Canterbury*, and Six other Honourable and Noble Biſhops in the Information mentioned. And the Information ſets forth, That the King, out of his Clemency and benign intention towards his Subjects of this Kingdom, did put forth his Royal Declaration, bearing date the fourth day of *April* in the third year of his Reign, entituled, *His Majeſty's Gracious Declaration to all his Loving Subjects for Liberty of Conſcience*; and that afterwards, the twenty-ſeventh of *April*, in the fourth year of his Reign, he publiſhed another Declaration, both which have been read to you; and for the further Manifeſtation and Notification of his Grace in the ſaid Declaration bearing date the twenty-ſeventh of *April* laſt, his Majeſty did order, That the ſaid Declaration ſhould be read on the twentieth and twenty-ſeventh of the ſame month in the Cities of *London* and *Weſtminſter* and ten miles about, and on the third and tenth of *June* throughout the whole Kingdom; and that the Right Reverend the Biſhops ſhould ſend the ſaid Declaration to be diſtributed throughout their reſpective Dioceſſes, to be read accordingly. But that the ſaid Archbiſhop and Biſhops the eighteenth of *May*, in the ſaid fourth year of his ſaid Majeſty's Reign, having conſpired and conſulted among themſelves to diminiſh the King's Power and Prerogative, did falſly, unlawfully, maliciouſly, and ſcandalouſly, make, compoſe, and write, a falſe, ſcandalous, malicious, and ſeditious Libel, under pretence of a Petition; which Libel they did publiſh in the preſence of the ſaid King; the Contents of which Libel you have likewiſe heard read. To this they have pleaded Not Guilty: You, Gentlemen, are Judges of the Fact; if we prove this Fact, you are to find them Guilty.

Mr. *Att. Gen.*

Mr. *At. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, your have heard this Information read by the Clerk, and it has been likewiſe opened to you at the Barr, but before we go to our Evidence, perhaps it may not be amiſs for us, that are of Council for the King, now in the beginning of this Cauſe, to ſettle the Queſtion right before you, as well to tell you what my Lords the Biſhops are not proſecuted for, as what they are; Firſt, I am to tell you, and I believe you cannot your ſelves but obſerve, that my Lords are not proſecuted as Biſhops, nor much leſs are they Proſecuted for any point or matter of Religion, but they are Proſecuted as Subjects of this Kingdom, and only for a temporal Crime, as thoſe that have injured and affronted the King to his very Face; for it is laid to be done in his own Preſence: In the next place, they are not Proſecuted for any Nonfeaſance, or not doing or omitting to do any thing, but as they are Actors, for cenſuring of his Majeſty and his Government, and for giving their Opinion in Matters wholly relating to Law and Government; and I cannot omit here to take notice, that there is not any one thing, which the Law is more jealous of, or does more carefully provide for the prevention and puniſhment of, than all accuſations and arraignments of the Government; no Man is allowed to accuſe even the moſt inferior Magiſtate of any misbehaviour in his Office, unleſs it be in a legal Courſe, though the Fact is true; no Man may ſay of a Juſtice of Peace to his Face, that he is unjuſt in his Office; no Man may come to a Judge, either by Word or Petition, You have given an unjuſt, or an ill Judgment, and I will not obey it, it is againſt the Rules and Law of the Kingdom, or the like; no Man may ſay of the great Men of the Nation, much leſs of the great Officers of the Kingdom, that they do act unreaſonably or unjuſtly, or the like; leaſt of all may any Man ſay any ſuch thing of the King, for theſe matters tend to poſſeſs the People, that the Government is ill adminiſtred, and the Conſequence of that is, to ſet them upon deſiring a Reformation, and what that tends to, and will end in, we have all had a ſad and too dear bought Experience; the laſt Age will abundantly ſatisfie us, whither ſuch a thing does tend: Men are to take their proper remedies for Redreſs of any Grievances they lye under, and the Law has provided ſufficiently for that: Theſe things are ſo very well known to all Men of the Law, and indeed to all the People of *England* of any Underſtanding, that I need not, nor will not, ſtand any longer upon it, but come to the matter that is now before you Gentlemen, to be Tryed. The Fact that we have laid, we muſt prove, rather to keep to the formality of a Tryal, than to pretend to inform you, or tell you what you do not know, it is all publickly notorious to the whole World; but becauſe we muſt go on in the regular methods of Law, we ſhall prove the Facts in the order they are laid in the Information. Firſt, We take notice, that His Majeſty, of his great Clemency and Goodneſs to his People, and out of his deſire that all his Subjects might live eaſily under him (of which I think never Prince gave greater or more plain Evidence of his Intentions that way) the fourth of *April*, 1687. He did iſſue forth his Royal Declaration for Liberty of Conſcience; this matter, without all queſtion, was welcome to all his People that ſtood in need of it, and thoſe that did not, could not but ſay, the thing in the nature of it was very Juſt, and Gracious; but preſently it muſt be ſurmiſed, that the King was not in Earneſt, and would ot, nor could not make good his Promiſe; but to take away all Surmiſes, his Majeſty was pleaſed by his Declaration of the twenty ſeventh of *April* laſt, not only to repeat his former Declaration, but likewiſe to renew his former Promiſes to his People, and to aſſure them that he ſtill was, and yet is, of the ſame Opinion, that he had at firſt declared himſelf to be of; nay, we further ſhew you, that to the end that this thing might be known to all his People, even to the meaneſt Men, who it may be were not willing or able to buy the Declaration, and that the King himſelf might be under higher Obligations, if it were poſſible, than his own Word, he was deſirous it ſhould be repeated in the Churches, and read in that Sacred Place, that all his People might hear what he had promiſed, and given his own Sacred Word for; and he himſelf might be under that Solemn Tye and Obligation to keep his Word, by remembring that his Promiſes had, by his own Command, been Publiſhed in the time of Divine Service, in the Houſe of God; and thereupon was the Order of Council made, that has been likewiſe read to you, which does direct, that it ſhould be read in all the Churches and Chappels in the Kingdom; and you have heard, and we ſhall prove, what a return His Majeſty has had for this Grace and Kindneſs of his;

you'l

you'l find when we come to read that which they call a Petition, all their Thanks his Majeſty had for his Favour and Goodneſs to his People, 'tis only hard Words, and a heavy Accuſation, ſuch as a private Perſon would be little able to bear, I will not aggravate the matter, but only ſay thus much, that His Majeſty, who was always a Prince of as great Clemency as ever this Kingdom had, and who was repreſented for all that, as a Prince of the greateſt Cruelty before his acceſſion to the Crown, by his Enemies, is now accuſed by his Friends for this Effect of his Mercy; My Lord, and Gentlemen of the Jury, His Majeſty reſented this ill uſage ſo far, that he has ordered and thought fit to have a publick Vindication of his Honour in this matter, by this Tryal; and we ſhall go on to our Proofs, and we do not doubt but you will do his Majeſty (as you do all other Perſons) Right.

Mr. *Sol. Gen.* My Lord, we will go on to prove the Parts of this Information, and we will proceed according to the Method which Mr. Attorney has opened, and which is purſuant to the order of the Facts laid in the Information. Give us the firſt Declaration under the Great Seal, the Declaration of the 4th. of *April*, 1687.

The Declaration was delivered into the Court.

Mr. *Sol. Gen.* Read the Date of it firſt.

Clerk Reads. *Given at our Court at* Whitehall, *the 4th. day of* April, 1687, *and in the third Year of our Reign.*

Mr. *Sol. Gen.* Read the Title of it, Sir.

Clerk. It is Entituled, *His Majeſties Gracious Declaration to all his Loving Subjects for Liberty of Conſcience.*

Sir *Rob. Sawyer.* Is it under Seal? Is the Great Seal to it?

Mr. *Sol. Gen.* Give it down to Sir *Robert Sawyer*, that he may ſee it, for I would have every thing as clear as poſſible. —— Sir *Robert Sawyer*, will you have it Read?

Sir *Rob. Sawyer.* No, we would ſave as much of the time of the Court, as may be.

Mr. *Sol. Gen.* Then pray put in the Second Declaration of the 27th. of *April* laſt.

Clerk Reads. *Given at our Court at* Whitehall, *the 27th. day of* April, 1688 *in the fourth Year of our Reign, and it is Entituled,* His Majeſties Gracious Declaration.

Sir *Rob. Sawyer.* Is that under the Great Seal too?

Clerk. Yes it is.

Mr. *Sol. Gen.* Deliver that down likewiſe, that they may ſee it.

Sir *Rob. Sawyer.* We are ſatisfied, you need not read it.

Mr. *Sol. Gen.* Then where is the Order of Council for the Reading of it?

Mr. *At. Gen.* Swear Sir *John Nicholas.* —— [There he is.

Sir *John Nicholas* Sworn.

Lord Ch. Juſt. Come, Mr. Attorney, what do you ask Sir *John Nicholas*?

Mr. *Sol. Gen.* Hand the Order to Sir *John Nicholas.* ——Is that the Order of Council, Sir *John*?

Sir *John Nicholas.* The Book, Sir, is not in my Cuſtody——there is the Regiſter that keeps it, he has it here to produce.

Mr. *Sol. Gen.* Swear Mr. *Gantlett.*

Mr. *Gantlett* Sworn.

Mr. *Sol. Gen.* Is that the Council Book?

Mr. *Gantlett.* Yes, this is the Council Book.

Mr. *Sol. Gen.* Then turn to the Order of the fourth of *May*, the King's Order of Council, for the Reading the Declaration.

Mr. *Gantlett.* There it is, Sir.

The Book delivered into Court.

Mr. *Sol. Gen.* Read it I Pray.

Clerk Reads. *At the Court at* Whitehall, *the fourth of* May, 1688. —— and ſo reads the Order of Council.

Mr. *Sol. Gen.* My Lord, we have one thing that is mentioned in the Information, that this Declaration was Printed; if that be denied, we will call *Henry Hills*, his Majesties Printer, because we would prove all our Information as it is laid.

Lord Ch. Just. You must do so, Mr. Sollicitor you must prove the whole Declaration.

Mr. *Sol. Gen.* Cryer, call *Henry Hills.*

He was called, but did not presently appear.

Mr. *Sol. Gen.* Call Mr. *Bridgman* —— though these Declarations prove themselves, we have them here Printed —— but Swear Mr. *Bridgeman.*

Mr. *Bridgeman* Sworn.

Mr. *Sol. Gen.* Shew Mr. *Bridgeman* the two Declarations.

Lord Ch. Just. What do you ask him?

Mr. *Sol. Gen.* We ask you, Sir, if the two Declarations were Printed.

Mr. *Bridgeman.* What Declarations do you mean, Mr. Solliitor?

Mr. *Sol. Gen.* You know what Declarations I mean, well enough, but we'l ask you particularly; you know the Declaration that was made the 4th. of *April*, in the third Year of the King. —— was it Printed?

Mr. *Bridgeman.* Yes, it was Printed by the King's Order.

Mr. *Sol. Gen.* Was that of the 27th. of *April*, in the 4th. Year of the King Printed?

Mr. *Bridgman.* Yes, they were both Printed by the King's Order.

Mr. *At. Gen.* Then the next thing in course, is the Bishops Paper.

Sir *Rob. Sawyer.* Mr. *Bridgeman*, pray let me ask you one Question; Did you ever compare the Print with that under Seal?

Mr. *Bridgeman.* I did not compare them, Sir *Robert Sawyer.*

Mr. *Sol Gen.* He does Swear they were Printed by the King's Order.

Sir *Robert Sawyer.* Good Mr. Sollicitor give me leave to ask him a Question—— Can you Swear then that they are the same?

Mr. *Bridgman.* I was not asked that Question, Sir.

Mr. *Sol. Gen.* Come then, Mr. *Bridgeman*, I'le ask you. ——Do you believe they are the same?

Sir *Rob. Sawyer.* Is that an Answer to my Question?

Mr. *Sol. Gen.* We must ask him Questions as well as you, Sir *Robert* --- what say you? Do you believe it to be the same?

Lord Ch. Just. You hear Mr. *Sollicitors* Question, answer it Mr. *Bridgeman.*

Mr. *Bridgeman.* Yes my Lord, I do believe it.

Lord Ch. Just. Well, that's enough.

Mr. *At. Gen.* If there were occasion, we have them here Compared, and they are the same.

Sir *Rob. Sawyer.* With Submission, my Lord, in all these Cases, if they will prove any Fact that is laid in an Information, they must prove it by those that know it of their own Knowledge.———Do you know it to be the same?

Mr. *Sol. Gen.* That's very well, Sir.

Sir *Rob. Sawyer.* Ay, so it is, Mr. Sollicitor, It is a wonderful thing, my Lord, that we cannot be permitted to ask a Question. —— Do you know it to be the same, Mr. *Bridgeman*, I ask you again?

Mr. *Bridgeman.* I have not compared them I tell you, Sir *Robert Sawyer.*

Sir *Rob. Sawyer.* Then that is no Proof.

Lord Ch. Just, Would you have a Man Swear above his Belief, he tells you he believes it is the same.

Sir *Rob. Sawyer.* Is that Proof of an Information?

Lord Ch. Just. Well, you'l have your time to make your Objections by and by.

Mr. *At. Gen.* Then Swear Sir *John Nicholas.*

Sir *John Nicholas.* I am Sworn already.

Mr. *At. Gen.* I see you have a Paper in your Hand, Sir *John Nicholas*, pray who had you that Paper from?

Sir *John Nicholas.* I will give you an Account of it, as well as I can.

Mr. *Pollixfen.* Before they go to another thing, my Lord, we think they have failed in their Proof of their Information, about the Printing this Declaration.

Mr. *At. Gen.* Where is Mr. *Hills.*

Mr.

Mr. *Juſt. Allyb.* They have laid, That it was printed by the King's Order; and it is ſuch a matter, Mr. Sollicitor, as you may clear, if you will, ſure.

Mr. *Sol. Gen.* There is Mr. *Hills*, now I ſee him.

L. C. Juſt. I was going to give Order that you ſhould ſend to the Printing-houſe for him.

Mr. *Juſt. Allyb.* They may put this matter out of doubt too, if they will, on the other ſide; for I ſee they have a Copy in Print, and there's the Original, they may compare them if they pleaſe.

Mr. *Sol. Gen.* I am very glad to hear ſuch a ſtrong Objection.

Sir *Rob. Sawyer.* We would clear the way for you, Mr. Sollicitor.

Mr. *Sol. Gen.* No, you put Straws in our way; we ſhall be able enough to clear it without your help. Swear Mr. *Hills* and young Mr. *Graham* here.

Hills and *Graham* ſworn.

Mr. *Sol. Gen.* Mr. *Graham*, did you compare any of theſe Printed Declarations with the Original?

Graham. Yes, I did compare ſome of them, and did make Amendments as I went along.

Mr. *Sol. Gen.* Shew one that you have compar'd with the Original.

Mr. *Att. Gen.* *Hills* is here himſelf, we'll ask him. Are you ſworn, Sir?

Cryer. He is ſworn.

Mr. *Att. Gen.* Pray were the King's Declarations for Liberty of Conſcience printed both of them?

Hills. Ay, an't pleaſe you, Sir.

Mr. *Att. Gen.* You printed them, I think.

Hills. Yes, I did print them.

Sir *Rob. Sawyer.* Mr. *Hills*, you ſay they were printed: Upon your Oath, after they were printed, did you examin them with the Original under Seal?

Hills. They were examined before they were printed.

Sir *Rob. Sawyer.* Did You examin them?

Hills. I did not, here's one that did.

Mr. *Sol. Gen.* Who is that?

Hills. It is Mr. *Williams* here.

Mr. *Sol. Gen.* Swear him.

Williams ſworn.

Mr. *Sol. Gen.* Do you hear, *Williams*? Do you know that the King's Declaration for Liberty of Conſcience, two of them, one of the 4th of *April*, and the other of the 27th of *April*, were printed? *Williams.* Yes, my Lord.

Mr. *Sol. Gen.* Did you examin them after they were printed, by the Copy they were printed by? *Williams.* Yes, I did.

Mr. *Sol. Gen.* Where had you the Copy; who had you it from?

Williams. I had it from Mr. *Hills.*

Sir *Rob. Sawyer.* Mr. *Williams*, did you examin them with the Original under the Great Seal?

Williams. The Firſt Declaration I did.

Sir *Rob. Sawyer.* The Second Declaration is the main.

Williams. The Second was Compos'd by the Firſt.

Sir *Rob. Sawyer.* Why, is there no more in the Second Declaration than there was in the Firſt?

Williams. Yes, there is, Sir.

Sir *Rob. Sawyer.* Did you examin That with the Original under the Great Seal?

Williams. No, I did not.

Mr. *Sol. Gen.* Can any one tell who did examin it under the Great Seal?

Mr. *Finch.* Pray what did you examin it by, Mr. *Williams*?

Williams. By a Copy that I receiv'd from Mr. *Hills.*

Mr. *Att. Gen.* Then we will go on; and we deſire Sir *John Nicholas* to give an account where he had that Paper that he has in his hand.

Mr. *Finch.* My Lord, it does not appear that the Copy that was printed is the true Copy of the Declaration.

Mr. *Att. Gen.* He ſays he had it from Mr. *Hills.*

Mr. *Finch.* Pray, Mr. *Hills*, what did you examin that Copy by, which you gave to Mr. *Williams*?

Hills. I had the Copy from Mr. *Bridgeman.*

Mr. *Finch.* Did you examin it with the Original under the Great Seal?

Hills. I did not examin it, I had it from Mr. *Bridgeman.*

Mr. *Finch.* What, was it under Seal?

Mr. *Bridgeman.* It was the Original ſigned by the King.

Mr. *Finch.* But I ask you, was it under Seal?

Mr. *Bridgeman.* Not under the Great Seal it was not, it was the very Declaration the King ſigned.

Sir *Rob. Sawyer.* But it ought to be compar'd with the Original, or it is no good proof that it is the ſame.

Mr. *Sol. Gen.* Sir *Robert Sawyer*, you underſtand Collation better ſure, you ſhould be aſham'd of ſuch a weak Objection as this.

Williams. We never bring our Proof to the Great Seal.

Sir *Rob. Sawyer.* But if you will have it Proof at Law, you muſt have it compared with the Original.

Mr. *Sol. Gen.* Do you think there is any great ſtreſs to be laid upon that? we only ſay it was printed.

Sir *Rob. Sawyer.* But you have made it part of your Information, and therefore you muſt prove it.

L. C. Juſt. I think there's proof enough of that; there need no ſuch nicety.

Mr. *Pollixfen.* Well, my Lord, we muſt ſubmit, let them go on, we won't ſtand upon this.

Mr. *Att. Gen.* Then pray let me go on. Where had you that Paper, Sir *John Nicholas?*

Sir *John Nicholas.* I had this Paper from the King's Hand.

L. C. Juſt. Put it in.

Mr. *Sol. Gen.* Who had you it from, do you ſay?

Sir *J. Nich.* From the King.

Mr. *Sol. Gen.* About what time had you it from the King, Sir?

Sir *J. Nich.* I had it twice from the King.

Mr. *Sol. Gen.* When was the firſt time, Sir?

Sir *J. Nich.* The firſt time was in Council the 8th of this month.

Mr. *Sol. Gen.* What became of it afterwards?

Sir *J. Nich.* The King had it from me the 12th, and the 13th I had it from the King again.

Mr. *Sol. Gen.* Pray deliver it this way into the Court: We will now go on, and prove the Biſhops hands to it. This is the Paper upon which we bring this Information, Gentlemen; it is all the Hand-writing of my Lord Archbiſhop, and ſigned by Him and the reſt of the Biſhops.

Mr. *Att. Gen.* I ſuppoſe my Lords the Biſhops will not put us to prove it, they will own their Hands.

L. C. Juſt. Yes, Mr. Attorney, their Council will put you to prove it; I perceive your beſt way is to ask nothing of them.

Mr. *Att. Gen.* My Lord, we will deſire nothing of them, we will go on to our Proofs. Call Sir *Thomas Exton*, Sir *Richard Raynes*, Mr. *Brooks*, Mr. *Recorder*, and Mr. *William Middleton.*

Sir *Thomas Exton* appeared, and was ſworn.

L. C. Juſt. What do you ask Sir *Thomas Exton?*

Mr. *Att. Gen.* Pray convey that Paper to Sir *Thomas Exton.*

Mr. *Sol. Gen.* Shew that Paper to Sir *Thomas Exton.*----Sir *Thomas*, I would ask you one queſtion: Do you know the Hand-writing of my Lord Archbiſhop of *Canterbury?*

Sir *Thomas Exton.* I'll give your Lordſhip what account I can.

Mr. *Sol. Gen.* Pray, Sir, anſwer my queſtion; Do you know his Hand-writing?

Sir *Tho. Exton.* I never ſaw him write five times in my life.

Mr. *Sol. Gen.* But I ask you, upon your Oath, do you believe that to be his Hand-writing?

Sir *Tho. Exton.* I do believe this may be of his Hand-writing.

Mr. *Sol. Gen.* Do you believe all the Body of it to be of his Hand-writing, or only part of it?

Sir *Tho. Exton.*

Sir *Tho. Exton.* I muſt believe it to be ſo, for I have ſeen ſome of his Hand-writing, and this is very like it.

Mr. *Sol. Gen.* What ſay you to the Name? do you believe it to be his Hand-writing? Sir *Tho. Exton.* Yes, I do.

Mr. *Sol. Gen.* Do you know any of the reſt of the Names that are upon that Paper?

Sir *Tho. Exton.* No, I do not.

L. C. Juſt. Do you for the Defendants ask Sir *Tho. Exton* any Queſtion?

Sir *Rob. Sawyer.* No, my Lord.

Mr. *Att. Gen.* Then call Sir *Richard Raynes.*

Sir *Tho. Exton.* My Lord, Sir *Richard Raynes* has been ſick this month, and has not been at the Commons.

Mr. *Sol. Gen.* We have no need of him. Call Mr. *Brooks.*

Mr. *Brooks* ſworn.

Mr. *Att. Gen.* Pray ſhew Mr. *Brooks* that Paper.

Mr. *Sol. Gen.* Mr. *Brooks*, I ask you this Queſtion, Do you know my Lord Archbiſhop's Hand-writing?

Mr. *Brooks.* Yes, my Lord.

Mr. *Att. Gen.* Pray look upon that Paper; do you take that to be my Lord Archbiſhop's Hand?

Mr. *Brooks.* Yes, my Lord, I do believe it to be my Lord Archbiſhop's Hand?

Mr. *Att. Gen.* What ſay you to the whole Body of the Paper?

Mr. *Brooks.* I do believe it to be his Hand.

Mr. *Att. Gen.* What do you ſay to his Name there?

Mr. *Brooks.* I do believe this Name is his Hand-writing.

Mr. *Sol. Gen.* Call Mr. *William Middleton.*

Mr. *Att. Gen.* Pray Mr. *Brooks* don't go away, but look upon the Names of the Biſhop of St. *Aſaph*, and my Lord of *Ely.*

Mr. *Sol. Gen.* Do you know my Lord Biſhop of St. *Aſaph*'s Hand-writing?

Mr. *Brooks.* I have ſeen my Lord Archbiſhop of *Canterbury* and the Biſhop of St. *Aſaph*'s Hand-writing, and I do believe this is his hand.

Mr. *Sol. Gen.* Look you upon the Name of my Lord of *Ely*; do you know his Hand-writing?

Mr. *Brooks.* My Lord, I am not ſo well acquainted with my Lord of *Ely*'s Writing.

Mr. *Sol. Gen.* But have you ſeen his Writing?

Mr. *Brooks.* Yes, I have.

Mr. *Sol. Gen.* Is that his Writing do you think?

Mr. *Brooks* It is like it.

Mr. *Sol. Gen.* Do you believe it to be his Hand?

Mr. *Brooks.* Truly I do believe it.

Sir *Geo. Treby.* Did you ever ſee him write? Mr. *Brooks.* No, Sir.

Mr. *Sol. Gen.* But he has ſeen his Writing.

Sir *Geo. Treby.* How do you know that it was his Hand-writing that you ſaw?

Mr. *Brooks.* Becauſe he own'd it.

L. C. Juſt. How do you know it, do you ſay?

Mr. *Brooks.* I know it, I ſay, becauſe I have ſeen a Letter that he writ to another perſon, which he afterwards own'd.

L. C. Juſt. What did he own, Mr. *Brooks?*

Mr. *Brooks.* That he wrote a Letter to another perſon, which I ſaw.

Sir *Geo. Treby.* To whom, Sir?

Sir *Rob. Sawyer.* Have you the Letter here, Sir?

Mr. *Brooks.* No, Sir, the Letter was writ to my Lord Biſhop of *Oxford.*

Sir *Geo. Treby.* Can you tell what was in that Letter?

Mr. *Att. Gen.* What is that to this Queſtion? You ask him, how he knows his Hand-writing: and, ſays he, I did not ſee him write, but I have ſeen a Letter of his to the Lord Biſhop of *Oxford.*

L. C. Juſt. And he does ſay, my Lord of *Ely* own'd it to be his Hand that is there.

Mr. *Sol. Gen.* No, my Lord, that's a miſtake, he own'd a Letter that he had writ to the Biſhop of *Oxford* to be his Hand-writing, and by compariſon of this with that (ſays he) I take this to be his Hand-writing.

Mr. *Brooks.* That is my meaning, my Lord.

Mr. *Sol. Gen.* Pray ſpeak out, and tell us what are the reaſons that makes you ſay you believe this to be the Biſhop of *Ely*'s Writing?

Mr. *Brooks.* Becauſe it reſembles a Letter that I have by me of his writing to the Biſhop of *Oxford.*

Mr. *Sol. Gen.* And you ſay he own'd that Letter to be his?

Mr. *Brooks.* My Lord Biſhop of *Oxford* did anſwer it, and I waited upon the Biſhop of *Ely* with the Anſwer, and he did own it.

Sir *Geo. Treby.* How did he own it, Sir?

Mr. *Brooks.* I had ſome Communication with my Lord of *Ely* about the ſubſtance of that Letter, and therefore I apprehended he own'd it.

Mr. *Juſt. Powell.* That's a ſtrange Inference, Mr. Sollicitor, to prove a man's Hand.

Mr. *Att. Gen.* We have more Evidence; but let this go as far as it can.

Mr. *Serj. Pemberton.* Certainly, my Lord, you will never ſuffer ſuch a Witneſs as this.

L. C. Juſt. Brother *Pemberton*, I ſuppoſe they can prove it otherwiſe, or elſe this is not Evidence.

Mr. *Juſt. Powell.* So they had need, for it is a ſtrange Inference of Mr. Sollicitor, that this is a Proof of my Lord of *Ely*'s Hand-writing.

Mr. *Juſt. Holloway.* The Biſhop of *Oxon* was dead before any of this matter came in agitation.

Mr. *Sol. Gen.* My Lord, we will bring other Proofs.--Call Mr. *Chetwood* & Mr. *Smith.*

Mr. *Chetwood* and Mr. *Smith* ſworn.

Mr. *Sol. Gen.* Mr. *Chetwood*, we would know of you if you know my Lord Biſhop of *Ely*'s Hand-writing? Mr. *Chetwood.* I never ſaw him write.

Mr. *Sol. Gen.* That's not an Anſwer to my Queſtion: Do you know his Hand-writing? Mr. *Chetwood.* I do not certainly know it.

Mr. *Sol. Gen.* Have you ſeen any of it?

Mr. *Chetwood.* I have ſeen my Lord of *Ely*'s Writing, that has been ſaid to be his.

L. C. Juſt. But ſurely you had better take a Witneſs that has ſeen him write.

Mr. *Juſt. Powell.* I think 'tis hardly poſſible for a man to prove his Hand, that has not ſeen him write.

L. C. Juſt. I think 'tis better proof, indeed, to bring ſome that has ſeen him write.

Mr. *Chetwood.* My Lord, 'tis a long time ſince I ſaw my Lord of *Ely*'s Writing.

L. C. Juſt. Pray bring ſome other Proof, if you have it.

Bp. of *Peterburgh.* My Lord, we are here as Criminals before your Lordſhip, and we are proſecuted with great Zeal: I beg your Lordſhip that you will not be of Councel againſt us, to direct 'em what Evidence they ſhall give.

L. C. Juſt. My Lord of *Peterburgh*, I hope I have not behaved my ſelf any otherwiſe hitherto than as becomes me: I was ſaying this (and I think I ſaid it for your Lordſhips advantage) That this was not ſufficient Proof; and I think, if your Lordſhip obſerved what I ſaid, it was for you, and not againſt you.

Bp. of *Peterb.* It was to direct them againſt us, how they ſhould give Evidence.

Mr. *Serj. Pemberton.* Pray, my Lord of *Peterburgh*, ſit down, you'll have no wrong done you.

Sir *Rob. Sawyer.* We that are of Council will take care of that; and pray, my Lord, will you pleaſe to paſs it by.

L. C. Juſt. We are not uſed to be ſo ſerv'd, and I will not be uſed ſo.

Mr. *Sol. Gen.* If your Lordſhip pleaſes to paſs that by, for what your Lordſhip ſaid was in favour of my Lords the Biſhops, but I ſee they do not take it ſo.

Mr. *Att. Gen.* Pray, Mr. *Chetwood*, do you look upon the Name of my Lord of *Ely*; do you believe that to be his Hand-writing?

Mr. *Chetwood.* I do believe it is.

Sir *Rob. Sawyer.* That's very well, when he ſays he never ſaw him write.

Mr. *Juſt. Powell.* What is the reaſon of that belief of his, I would feign know?

Mr. *Chetwood.* I have formerly ſeen his Hand, I think it was his; but I never ſaw Lord of *Ely* write his Hand.

Sir *Rob. Sawyer.* Then the Queſtion is, Whether this be Evidence?

Mr. *Fineh.* How do you know that that which you ſaw formerly was my Lord of *Ely*'s Hand?

Mr. *Chetwood.* I have no ſuch Certainty, as poſitively to ſwear that that was his Hand.

Mr. *Sol. Gen.* We will go on to other Proofs; and if we want better Evidence at the end, we will argue with them.

Mr. *Chetwood.*

Mr. *Chetwood.* I am not certain that what I ſaw was my Lord of *Ely*'s Hand-writing, becauſe I never ſaw him write.

Mr. *Sol. Gen.* You do very well to ſhew your good affection.

Mr. *Att. Gen.* Mr. *Smith*, I would ask you this Queſtion, Do you know my Lord of *Ely*'s Hand-writing?

Mr. *Smith.* I have ſeen it often.

Mr. *Att. Gen.* Look upon the Name of my Lord of *Ely* in that Paper; Do you believe it to be my Lord's Hand-writing, or no?

Mr. *Smith.* I did not ſee him write it, Sir; I cannot tell whether it is or no.

L. C. Juſt. Did you ever ſee his Name?

Mr. *Smith.* Yes, but it was a great while ago, and here are but ſeven Letters, and I cannot judge by that: I was better acquainted with his Hand-writing heretofore.

Mr. *Sol. Gen.* Pray, Sir, anſwer me; Do you believe it to be his Writing, or do you not?

Mr. *Smith.* I believe it may, for I did not ſee him write it.

Mr. *Sol. Gen.* But my Queſtion is, Do you believe it, or do you not?

Mr. *Smith.* I ſay, I was better acquainted with it heretofore than I am now.

Mr. *Sol. Gen.* But pray anſwer my Queſtion: Do you believe that to be my Lord of *Ely*'s Hand-writing, or do you not?

Mr. *Smith.* I believe it may, Sir.

Sir *Rob. Sawyer.* Why do you believe it?

Mr. *Smith.* I have no other reaſon to believe it, but becauſe I have ſeen ſomething like it.

Mr. *Juſt. Powell.* How long ago is it ſince you ſaw him write?

Mr. *Smith.* I have not ſeen him write, ſo as to take notice of it, for ſome years: I could better judge of it when he writ his Name *Turner*, than now it is *Ely*, becauſe there was more Letters to judge by.

Mr. *Middleton* ſworn.

L. C. Juſt. Here's Mr. *Middleton*; what do you call him for?

Mr. *Sol. Gen.* To prove many of their Hands.

Mr. *Att. Gen.* Pray ſhew him that Paper.

Mr. *Sol. Gen.* Firſt, Mr. *Middleton*, do you know my Lord Archbiſhop's Hand-writing?

Mr. *Middleton.* I have ſeen his Grace's Hand-writing.

Mr. *Sol. Gen.* Do you believe it to be his?

Mr. *Middleton*, It is very like it.

Mr. *Sol. Gen.* But do you believe it, or do you not?

Mr. *Middleton.* I do believe it.

Mr. *Sol. Gen.* Do you know my Lord Biſhop of St. *Aſaph*'s Hand-writing?

Mr. *Middleton.* I never ſaw it as I know of.

Mr. *Sol. Gen.* What do you ſay to my Lord of *Ely*? his Name is next.

Mr. *Middleton.* It is like his Lordſhip's hand.

Mr. *Sol. Gen.* Do you believe it, or do you not?

Mr. *Middleton.* It is like it, that's all I can ſay.

Mr. *Sol. Gen.* Cannot you tell whether you believe it, or not believe it?

Mr. *Middleton.* I do believe it is his hand.

Mr. *Sol. Gen.* Did you ever ſee him write? for I would clear this matter beyond exception.

Mr. *Middleton.* I have ſeen his Lordſhip write, but I never ſtood by him ſo near as to ſee him make his Letters.

Mr. *Sol. Gen.* Is that his Hand-writing?

Mr. *Middleton.* It is like it, I believe it is his.

Mr. *Sol. Gen.* You did not guide his Hand I believe.----Do you know my Lord of *Chicheſter*'s Hand-writing?

Mr. *Middleton.* Sir, I am acquainted with none of their Hands but with my Lord of *Canterbury*'s and my Lord of *Ely*'s.

Mr. *Sol. Gen.* Do you know my Lord of *Peterburgh*'s Hand-writing?

Mr. *Middleton.* I had my Lord of *Peterburgh*'s Writing two years ago for ſome money, but I cannot ſay this is his.

Mr. *Sol. Gen.* Do you believe it to be his?

Mr. *Middleton.*

Mr. *Middleton.* I never took notice of it ſo much, as to ſay, I believe it to be like it, I never ſaw it but once.

Mr. *Sol. Gen.* Do you know any other of the Names there? What ſay you to the Biſhop of *Briſtol*'s Name?

Mr. *Middleton.* I ſaw once my Lord of *Briſtol*'s Hand-writing.

Mr. *Sol. Gen.* What ſay you to that Writing there?

Mr. *Middleton.* It is like it.

Mr. *Sol. Gen.* Do you believe it to be his or no?

Mr. *Middleton.* Truly, that I cannot ſay, for I never ſaw it but once.

Lord Ch. Juſt. You never ſaw him Write, d'd you?

Mr. *Middleton.* No, my Lord, I never did.

Mr. *Sol. Gen.* Then we will call Sir *Thomas Pinfold*, and Mr. *Clavel.*——Sir *Thomas Pinfold* is there, Swear him.

Sir *Thomas Pinfold* Sworn.

Mr. *Sol. Gen.* Sir *Thomas Pinfold*, do you know my Lord Biſhop of *Peterburgh*'s Hand-writing?

Sir *Thomas Pinfold.* Truly, not very well, I never ſaw but one Letter from him in my Life; ſhew me his Hand, and I will tell you ——Which was done.

Mr. *Sol. Gen.* Well Sir, what ſay you to it?

Sir *Tho. Pinfold.* Then upon my Oath I ſay, I cannot well tell upon my own Knowledge that it is his Hand.

Mr. *Sol. Gen.* I ask you, do you believe it to be his Hand?

Sir *Tho. Pinfold.* Sir, upon the Oath that I have taken I will anſwer you, that upon this account, that I have heard there was a Paper delivered by my Lords the Biſhops to the King, and this Paper that you offer me, I ſuppoſe to be the ſame, upon that Score I do believe it, but upon any other Score I cannot tell what to ſay.

Mr. *Sol. Gen,* I ask you upon your Oath, Sir, do you believe it is his Hand-writing or no?

Sir *Tho. Pinfold.* Sir, I have anſwered you already, that upon my own Knowledge I cannot ſay it is his Hand-writing; but becauſe I have heard of ſuch a Paper, I do believe it may be his.

Lord Ch. Juſt. Did you ever ſee my Lord Biſhop write?

Sir *Tho. Pinfold.* I have been in his Chamber ſeveral times when he has been Writing, but I had more Manners than to look upon what he Writ.

Lord Ch. Juſt. Did you never ſee him write his Name?

Sir *Tho. Pinfold.* I do not know that I ever ſaw him write his Name, but I have ſeen him Writing I ſay, and ſo my Lord Biſhop may have ſeen me Writing, but I believe he does not know my Hand.

Mr. *Sol. Gen.* You have ſeen him write you ſay.

Sir *Tho. Pinfold.* I tell you, Mr. Sollicitor, I have been in his Chamber when he has been Writing, but I had more Manners than to look over him.

Mr. *Juſt. Powel.* Then you did never ſee any of that Writing.

Sir *Tho. Pinfold* I cannot ſay I did, my Lord.

Mr. *Att. Gen.* Pray did you never ſee any of his Writing but that Letter you ſpeak of.

Sir *Tho. Pinfold.* No, not that I remember.

Mr. *Juſt. Powel.* Mr. Sollicitor, you muſt call other Witneſſes, for this does not prove any thing.

Mr. *At. Gen.* We will go on ——Swear Mr. *Clavel.*

Mr. *Clavel* Sworn.

Mr *Sol. Gen.* Do you know my Lord Biſhop of *Peterburgh*'s Hand-writing or no?

Mr. *Clavel.* I have ſeen it many times.

Mr. *Sol. Gen.* Do you know it when you ſee it?

Mr. *Clavel.* I believe I do, Sir.

Mr. *Sol. Gen.* Pray look upon that Paper, and upon your Oath tell us, do you believe that Name to be his Writing, or no?

Mr. *Clavel.* I do believe it is, my Lord.

Mr. *At. Gen.* Pray look upon the reſt of the Hands there, do you know any of the other Names?

Mr. *Clavel.* No, I do not.

Mr. *At.*

Mr. *Att. Gen.* Have you ever ſeen any of their Writing?

Mr. *Clavell.* It is probable I may have ſeen ſome, but do not now remember it.

Mr. *Sol. Gen.* I think you are a Bookſeller, Mr. *Clavell.*

Mr. *Clavell.* Yes, I am ſo, Sir.

Mr. *Sol. Gen.* I ſuppoſe you have had ſome Dealings with them in the way of your Trade. Did you never ſee any of their Writing?

Mr. *Clavell* I have ſeen the Names of ſome of them, but it is ſo long ſince that I cannot Remember.

L. C. J. Did you ever ſee my Lord of *Peterborough* Write?

Mr. *Clavell.* I cannot tell whether ever I ſaw him Write his Name or no; but I have had ſeveral Letters from my Lord of *Peterborough.*

Mr. *Sol. Gen.* Is that his Hand-writing?

Mr. *Clavell.* I cannot ſay it is, I believe it is.

Mr. *Sol. Gen.* You have had Letters from him you ſay?

Mr. *Clavell.* Yes, and it ſeems to be like his Hand.

Mr. *Pollixfen.* But you never ſaw him Write his Hand you ſay?

Mr. *Clavell.* I cannot ſay I ever did.

Mr. *Sol. Gen.* Theſe Letters that you have received from my Lord of *Peterborough*, did he own them? Do you think they were Counterfeit, or of his own Hand-writing?

Mr. *Clavell.* I ſuppoſe he has owned them, Sir.

Mr. *J. Powell.* But you muſt Anſwer directly, Sir, Did he own them?

Mr. *Sol. Gen.* What did thoſe Letters concern? were they about Books, or what?

Mr. *Clavell.* They were ſometimes about one buſineſs, ſometimes about another.

Mr. *Sol. Gen.* Was the ſubject-matter of any of theſe Letters about Mony; and was it paid you? Did you receive, or did you give any account of it?

Mr. *Clavell.* They were about ſeveral Buſineſſes.

L. C. J. Look you, Mr. *Clavell*, you muſt give us as particular account as you can.

Mr. *Sol. Gen.* Pray, Sir, upon thoſe Letters were the things done that thoſe Letters required.

Mr. *Clavell.* Yes, they were.

Mr. *Sol. Gen* Did you do your part?

Mr. *Clavell* Yes, I did.

Mr. *Sol. Gen.* Now I would ask you, Do you believe that Name of my Lord Biſhop of *Peterborough* to be the Hand-writing of my Lord Biſhop?

Mr. *Clavell.* I believe it is.

Mr. *J. Powell.* Do you know that thoſe Letters that you ſay you received from my Lord, were of my Lords own Hand-writing, Do you Swear that?

Mr. *Clavell.* My Lord I cannot Swear that.

Mr. *Finch.* Do you know whether the Letters that you received, as you ſay, were written by my Lord himſelf, or by his Secretary?

Mr. *Clavell.* I have received Letters from him, and his Secretary too.

Sir *G. Treby.* But were you preſent with him when he writ any Letters with his own Hand?

Mr. *Sol. Gen.* You do not mean a Letter to your ſelf ſure, Sir *George?*

Sir *G. Treby.* No Sir, I ſay any Letters.

Mr. *Clavell.* I have been preſent with my Lord often, but I cannot ſay I have ſeen my Lord write.

L. C. J. He has here told you, he has had ſeveral Letters of my Lords own Hand, and from his Secretary too.

Mr. *J. Powell.* He has ſaid it, but you ſee he ſays he never ſaw him write.

Mr. *Sol. Gen.* We have given Evidence againſt my Lord Arch-Biſhop, Lord Biſhop of *Eli*, St. *Aſaph*, *Peterborough*, and *Briſtol.*

Mr. *J. Powell.* Certainly Mr. *Sollicitor* you miſtake —— But go on ——

Mr. *Sol. Gen.* We have given Evidence I ſay againſt them, Sir, but whether it be ſufficient Evidence, we ſhall Argue by and by. —— Call Mr. *Hooper* and Mr. *Chetwood* again.

Mr. Chetwood *appeared.*

Mr. *Sol. Gen.* Do you know the Hand-writing of my Lord Biſhop of *Bath* and *Wells?*

Mr. *Chetwood.* I have ſeen it Twice or Thrice, but it is a conſiderable time ſince I did ſee it.

Mr. *Sol. Gen.* Do you believe that is his Hand-writing?

Mr. *Chetwood.* I never ſaw him write his Name in my Life.

Mr. *Sol. Gen.* Pray look upon the Name, and tell us what you believe of it?

Mr. *Chetwood.* I believe it may, but I do not certainly know it to be his Hand, I rather believe it is my Lord Biſhop of *Bath* and *Wells* his Hand, than I believe that other to be my Lord of *Peterboroughs.*

Sir *G. Treby.* Do you believe that to be my Lord of *Peterborough*'s Hand or no?

Mr. *Chetwood.* I ſay, I rather believe that this is the Biſhop of *Bath* and *Wells* his Writing, than that which is above it or below it, to be their Writing; but truly I do not diſtinctly know my Lord Biſhop of *Bath* and *Wells* his Hand.

Mr. *Sol. Gen.* Call Mr. *Hooper.*

L. C. J. You are very lame in this matter.

Mr. *Sol. Gen.* The Witneſſes are unwilling, and we muſt find out the Truth as well as we can.

Mr. Hooper *did not appear.*

Mr. *Sol. Gen.* Call Mr. *James* and Mr. *Powell.*

Mr. James *appeared and was Sworn.*

Mr. *Sol. Gen.* Do you know my Lord Biſhop of *Briſtol*'s Writing, Mr. *James?*

Mr. *James.* Yes, I believe I do, but I am not ſo certain, becauſe my Lord Writes ſeveral times ſeveral Hands.

Mr. *Sol. Gen.* Shew him the Paper: Is that my Lord of *Briſtol*'s Hand?

Mr. *James.* I cannot ſay it is or no.

Mr. *Sol. Gen.* What do you believe?

Mr. *James.* It looks like his Hand, and that's all I can ſay.

Mr. *Sol. Gen.* But pray hearken, and Anſwer to what I ask you; you are prepared for one Queſtion it may be, and I ſhall ask you another: upon your Oath, Do you believe it to be the Hand-writing of my Lord of *Briſtol?*

Mr. *James.* Upon my Oath, I can only ſay it looks like it, that's all.

L. C. J. Did you ever ſee him Write?

Mr. *James.* Yes, my Lord, I have ſeen his Hand-writing ſeveral times, and it is like his Hand-writing, that is all I can ſay.

Mr. *Sol. Gen.* Sir, remember you are upon your Oath, and Anſwer my Queſtion.

Mr. *James.* Upon my Oath, I know no more than that, Sir *William Williams.*

Mr. *Sol. Gen.* I ask you, Sir, whether you believe it to be his Hand or not?

Mr. *James.* My Lord, it looks like his Hand, and it may be his Hand.

Mr. *Att. Gen.* But you do think and believe one way or other: What do you believe?

Mr. *James.* It may be his Hand, for what I know, and it may not.

Mr. *Sol. Gen.* It may be your Hand.

Mr. *James.* No, Sir, it cannot be mine, I am ſure.

Mr. *Sol. Gen.* What do you believe?

Mr. *James.* I believe it may be his Hand, or it may not be his Hand, that is all I can ſay.

L. C. J. Come, Sir, you muſt Anſwer fairly, Do you believe it to be his Hand, or do you not?

Mr. *James.* Yes, I do believe it.

Mr. *Att. Gen.* You are very hard to believe methinks.

Mr. *James.* No, I am not.

Mr. *Sol. Gen.* You do very well now Mr. *James*; when you do well, we'll commend you.

Mr. *Att. Gen.* Call Mr. *Nathaniel Powell.*

Mr. Powell *was Sworn.*

Mr. *Sol. Gen.* Pray, Sir, let's know what's your Name.

Mr. *Powell.* My Name is *Nathaniel Powell.*

Mr. *Sol. Gen.* Pray do you know the Hand-writing of my Lord Biſhop of *Chicheſter.*

Mr. *Powell* I have not ſeen the Paper, Sir.

Mr. *Sol. Gen.* Do you know his Hand-writing?

Mr *Powell.* Yes, I believe I do.

Mr. *Sol. Gen.* Look upon that Name of his.

Mr. *Powell.* I did not ſee my Lord Write that.

Mr. *Sol. Gen.* Who ſays you did: no Body asks that of you; how you Anſwer! Pray Sir, remember your Oath, and Anſwer ſeriouſly, Do you believe it to be his Writing or no?

Mr. *Powell*

Mr. *Powell.* I believe it is like my Lord's Hand-writing, but I did never ſee him Write it.

Mr. *Sol. Gen.* No Body ſays you did.

Mr. *Powell.* Therefore I cannot Swear poſitively it is his Hand.

Mr. *Sol. Gen.* We do not ask that neither.

Mr. *Powell.* I cannot tell whether it be his Hand or no.

L. C. J. Sir, you muſt Anſwer the Queſtion directly, and ſeriouſly: Do you believe it, or do you not believe it?

Mr. *Powell.* I cannot tell what to believe in the Caſe.

Mr. *Sol. Gen.* Then I ask you another Queſtion, upon your Oath, Do you believe it is not his Hand?

Mr. *Powell.* I cannot ſay that neither.

Mr. *Sol. Gen.* Once again, I ask you, upon your Oath, Do you believe it to be his Hand? I ask you plainly, and let Mankind Judge of you?

Mr. *Powell.* I tell you, Sir, I cannot tell what to believe.

Mr. *Sol. Gen.* My Lord, if theſe things be endured, there will be an end of all Teſtimony, if Witneſſes do not anſwer fairly to the Queſtions that are asked them.

Mr. *J. Powell.* Truly to me, for a Man to Swear his Belief in ſuch a matter, is an extraordinary thing.

Mr. *Sol. Gen.* He is obliged to anſwer Queſtions, when they are fairely put to him.

Mr. *Pollixfen.* I think that is a hard Queſtion, not to be Anſwered.

Mr. *Sol. Gen.* Make your Exceptions to the Evidence if you pleaſe.

L. C. J. Firſt, he ſays, He knows his Hand; then he ſays, He has ſeen him write; and then he ſays, He did not ſee him write this; but he ſhuffles, he won't anſwer whether he believes it or not.

Mr. *Pollixfen.* The Queſtion is, Whether belief in any caſe be Evidence?

Mr. *Sol. Gen.* If they have a mind to a Bill of Exceptions upon that point, let them Seal their Bill, and we'll Argue it with them when they will; in the mean time, we'll go on, and that which we now pray, my Lord, is, That this Paper may be Read.

Mr. *Att. Gen.* We have given ſufficient Evidence ſure to have it Read, therefore we deſire it may be Read.

Mr. *Serj. Levinz.* My Lord, before this Paper be Read, we hope you will let us be heard to it: we think that what they deſire (to have this Paper Read) ought not to be: for what is all the proof that they have given of this Paper? they have a proof by Compariſon of Hands, which in a Criminal Caſe ought not to be received: and beſides, my Lord, what is that Compariſon of Hands, that they have offered? Some perſons come here and ſay, They cannot tell whether it be their Hands, they believe it may or it may not, for ought they know; How ſhall we Convict any Man upon ſuch a Teſtimony as this? can we have our Remedy againſt him for Perjury, for ſaying, He believes it to be our Hand? therefore here is not any Evidence to Charge us. For firſt, It is only a Compariſon of Hands; And ſecondly, That Compariſon is proved in ſuch an uncertain manner: Some of them tell you, They do not know what to believe; another tells you, I believe 'tis rather ſuch a Lord's Hand; then the others are ſuch a Lord's Hands, I believe 'tis rather his Hand than that above it, or that below it; what ſort of proof is all this? Therefore we pray it may not be Read till they prove it better.

Mr. *Serj. Pemberton.* Pray, my Lord, ſpare me a word or two in this matter for Evidence ſake, there is a great deal of reaſon we ſhould take Exceptions to the Evidence that has been given: for truly I think I never heard ſuch a ſort of Evidence given before; It is a Caſe of as great Concernment as ever was in *Weſtminſter-Hall*; and for them to come to prove Hands only by thoſe that ſaw Letters, but never ſaw the perſons Write; this I hope will not amount to ſo much as a Compariſon of Hands. Your Lordſhip knows, that in every petty Cauſe, where it depends upon the Compariſon of Hands, they uſe to bring ſome of the Parties Hand-writing, which may be Sworn to, to be the Parties own Hand, and then it is to be compared in Court with what is endeavoured to be proved, and upon comparing them together in Court, the Jury may look upon it, and ſee if it be right; and never was there any ſuch a thing as this admitted in any poor petty Cauſe, that is but of the value of Forty Shillings. And therefore as to this Evidence, Firſt, We ſay Compariſon of Hands ought not to be given at all in the Caſes of Criminals; And I believe it was never heard of that it ſhould. In the next place, if it be admitted to be Evidence, yet it is not ſuch an Evidence, as that by Compariſon of Hands the Jury can take notice of it; for in ſuch

manner

manner of proofs by Compariſon of Hands, the uſage is, That the Witneſs is firſt asked, concerning the Writing he produces, Did you ſee this Writ by the Defendant, whoſe Hand they would prove? If he anſwers yes, I did, then ſhould the Jury upon Compariſon of what the Witneſs Swears to, with the Paper that is to be proved, judge whether thoſe Hands be ſo like as to induce them to believe, that the ſames perſon Writ both; and not that the Witneſs ſhould ſay, I had a Letter from ſuch a perſon, and this is like the Hand of that Letter, therefore I believe it to be his Hand: My Lord, I hope this ſhall never be admitted for Evidence in this Court.

L. C. J. I do take it, that the Witneſs himſelf is Judge of the Compariſon; for if he does know the Parties Hand, and a Paper be offered him to prove the Parties Hand, he is to compare it in his own mind.

Mr. *Serj. Pemberton.* It never was admitted to be ſo, that I know of, my Lord, or ever Read of.

Mr. *Sol. Gen.* You may remember ſeveral Caſes about that, particularly *Sidney*'s Caſe.

Mr. *Pollixfen.* Pray, my Lord, hear me a little as to that: it is a Point of very great moment, whether in the Caſe of a Miſdemeanour either in an Indictment or Information, it be good Evidence to offer Compariſon of Hands; and that this Court did adjudge quite contrary upon an Indictment of Forgery againſt my Lady *Carr*, appears in *Syderſin*'s *Reports*; they went to prove her Letters Written by her to *Cox*, the Court rejected it, and gave their judgement here, That it was no Evidence; and that for this Reaſon, Becauſe of the evil conſequences of it. For ſaid they, It is an eaſie matter for any Man's Hand to be Counterfeited; that they ſure will agree, for frequent daily experience ſhews how eaſily that may be done: is it not eaſie then to cut any Man down in the World, by proving it is like his Hand? and proving that likenſs by comparing it with ſomething that he hath formerly ſeen? this ſtrikes mighty deep; the honeſteſt Man in the World and the moſt Innocent may be deſtroyed, and yet no fault to be found in the Jury or in the Judges; if the Law were ſo, it would be an unreaſonable Law. Next, my Lord, for the Caſe of *Sidney*, that was a Caſe of Treaſon. Now in the Caſe of Treaſon there is always other Evidence brought; and this Evidence comes in, but as a Collateral Evidence, to ſtrengthen the other; but in this Caſe it is the ſingle Evidence, for ought that appears, for there is nothing more (for ought I can ſee) in the Caſe, but whether this were their Hands, and proved only by what another believes: Now ſhall any be condemned by anothers belief without proof? ſurely, my Lord, that was never Evidence yet to Convict any one; ſo that their proof failes in both Points; For firſt, It ought to be conſidered, whether Compariſon of Hands be Evidence in a Caſe of Miſdemeanour; And next if it be Evidence, whether you will take it, that the belief of a Man that brings nothing to compare with it, or never ſaw the Party Write, but has received Letters, and ſays, This is like it, and therefore he believes it to be his Hand, be good Evidence as a Compariſon of Hands.

Mr. *Serj. Pemberton.* My Lord, they are pleaſed to mention———

Mr. *Sol. Gen.* Mr. Serj. you have been heard already, and you are not to reply upon us; or if you would, we muſt be heard firſt.

Mr. *Serj. Pemberton.* I would only ſpeak to that Caſe of *Sidney*: my Lord, that Caſe differs from this *toto Cælo*, the Writing was found in his poſſeſſion, in his Study; there was the proof that nailed him.

Mr. *Sol. Gen.* You ſhall ſee how we'll apply it by and by.

Mr. *Att. Gen.* Pray, my Lord, favour me a word in this matter: that there is ſtronger and weaker Evidence no Man doubts; but that which theſe Gentlemen ſay, that in this Caſe there is no Evidence, muſt needs be a miſtake: if they mean, that it is not ſo ſtrong an Evidence as is poſſible to be given, I agree with them, it is not: For if we had brought three or four Men that had ſeen them Write this very Paper, and put their Names to it, that had been a ſtronger Evidence than this, that we have given; but whether we do not give ſuch a ſort of Evidence as may induce the Jury to belive, that this is their Paper, and their Hands to it, we ſubmit: they ſay, This is ſuch a method as never was taken; but I admire that that ſhould be ſaid by Men of their Experience and Knowledge in the Law; for is there any thing more uſual, or any other courſe taken for the proof of Hands, than for a Witneſs to ſay, He knows the Hand of the Party very well, for he has often ſeen his Hand-writing, or received Letters from him? and if you ſhew him the thing that you would prove to be his Hand, and he ſays,

I do

I do believe this to be his Hand, for this Reaſon, Becauſe I have had other things of his Writing: Certainly in the Experience of any Man that has practiſed, this is an Evidence that is given every day, and allowed for Evidence. For the Caſe of Mr. *Sidney*, which your Lordſhip has heard mentioned, it is certainly very oppoſite to this purpoſe; it is inſiſted upon and pretended, That that was Evidence, becauſe it was found in his Study: but without all doubt, that would not be the reaſon: for may not a Book of another Man's Writing be found in my Study? and he inſiſted upon it in his own Defence: but the Anſwer was, That it ſhould be left as the Queſtion, Whether the Jury would believe it upon the Evidence that was given, of its being his own Hand-writing: And ſo in this Caſe, though it be not ſo ſtrong Evidence, as if we had brought thoſe that had ſeen them Write it; yet Evidence it is, and whether it be ſufficient to ſatisfie the Jury, may be a Queſtion; but no Queſtion, it is good Evidence in Law.

Mr. *Sol. Gen.* It is a wonderful thing, they ſay, That ſuch Evidence ſhould be offered: but truly, my Lord, it is a much ſtranger thing to hear Mr. *Serj. Pemberton* ſay, It was never done before; and then to make that Remark to your Lordſhip upon the Caſe of *Sidney*, which I'le put to your Lordſhip and the Court as a Caſe, and let him contradict me if he can; and then we ſhall ſee how far it goes. *Sidney* was Indicted for High Treaſon; and the Treaſon inſiſted upon was, A Writing ſuppoſed to be his, it being found in his Study; the Queſtion was, Whether it was his Hand-writing or no? there was no poſitive Evidence that is was his Hand-writing; there was no Evidence produced that proved it to be his Hand-writing; for there was no one that Swore, That they they ſaw him Write it; there was nothing proved, but the ſimilitude of Hands. Ay, but ſays Mr. *Serj. Pemberton*, It was found in his Study: will Mr. *Serj. Pemberton* be content, that all the Libels that are found in his Study, ſhall, for that reaſon, be adjudged to be Libels, to be his Hand-writing, and he to be a Libeller for them? I think he will make a ſevere Declamation againſt that, and he would have very good reaſon for it: Certainly that which was Evidence in one Man's Caſe, will be Evidence in another. God forbid there ſhould be any ſuch diſtinction in Law; and therefore I conclude that this is good Evidence.

Mr. *Serj. Pemberton.* The Court went upon this, That it was found in his Study, and compared with Letters and Bills of Exchange produced in Court; which were Sworn to be of his Hand-writing.

Mr. *Sol. Gen.* My Lord, I was by all the time; for I was ordered to attend him in the *Tower*; and therefore I can tell what paſſed as well as any Body. My Lord, they proved no more as to that Libel, but only by Compariſon of Hands; they had no other proof in that Caſe, but by comparing the Hand-writing; and that was inſiſted upon to be a mighty fallible thing: That which they would have for us to compare, Paper with Paper, it is true, would make the proof ſomewhat ſtronger, if we could, in ſuch a Caſe as this, be able to produce ſuch Evidence: but I appeal to your Lordſhip, and ſhall leave it to the Jury, to conſider which is better Evidence; theſe Men, that have been produced, that have been Converſant with theſe Lords, and acquainted with their Hand-writing, and who (as your Lordſhip ſees) are not willing Men to give Evidence, they avoid it as much as they can; and they Swear it all to be the Hand-writing of the Archbiſhop of *Canterbury*, as they believe; which is as far as any Man can Swear. One ſays the whole Body of the Paper is my Lord of *Canterbury*'s Hand, and he knows it very well; ſo that we are not upon a ſingle Name, but a whole Paper that contains many Lines; and this is as much as can be proved by any one, that did not ſee the thing Written. Then, my Lord, for the reſt of the Company, the Evidence is not ſo ſtrong againſt every one of them, as it is againſt my Lord Archbiſhop; but is ſtrong enough certainly to Convict them of what we accuſe them of: and pray, my Lord, what was the Objection in *Sidney*'s Caſe, but what has been mentioned here? That any Man's Hand might be Counterfeited. I remember in that Caſe, there was one Mr. *Wharton*, a young Gentleman, then in the Court, that undertook to the Court, That he would Coun-

terfeit that Hand preſently; and he that was to Swear the Compariſon, ſhould not know, which was the one, and which was the other; which certainly was a ſtronger Caſe than this. And I ſee ſome of the Learned Gentlemen that are now ſtanding at the Bar, who preſſed this matter very hard againſt Mr. *Sidney*, and Mr. *Sidney* loſt his Life upon that Compariſon of Hands; though Mr. *Wharton* did Teſtifie how eaſie a matter it was to have a Man's Hand Counterfeited; and we all know was a Man of Value and Quality; ſo there is a Preſident for Mr. *Serj. Pemberton*, that never heard of this Law before. They ſay the proving of ſimilitude of Hands is no Evidence, unleſs you prove the actual Writing; what a condition then will *England* be in, when Witneſſes are Dead? Is it not the moſt common practice that can be, to produce Witneſſes to prove ſuch Men are Dead, whoſe Names are ſet as Witneſſes to Deeds; and they Swear, They believe it to be the Hand-Writing of thoſe Witneſſes? Can there be any greater Evidence of ſuch a Caſe, unleſs it be the confeſſion of the Party himſelf? My Lord, we are now only upon reading this Paper. We have been heard, and they have been heard; now we pray the Paper may be Read.

Mr. *Recorder*. We pray it may be Read.

Mr. *Serj. Levinz*. If your Lordſhip pleaſe———

Mr. *Sol. Gen*. We are not to be replied upon, Mr. *Serjeant*.

L. C. J. You have ſpoke Brother *Levinz*, and you have ſpoke Brother *Pemberton*, and I would willingly hear you what you have to ſay; but we muſt not have vying and revying, for then we ſhall have no end.

Mr. *Serj. Levinz*. I would offer your Lordſhip ſome new matter which has not been touched upon yet; why it is not to be Read.

L. C. J. What's that Brother?

Mr. *Serj. Levinz*. All the proof that has been given whatſoever it amounts to, has been only of its being Written, but no proof has been given of its being Written in the County of *Middleſex*, where the Information is laid, and the matter is Local.

Mr. *Sol. Gen*. Firſt Read it, and then make your Objection.

Mr. *Recorder*. My Lord, as to the Evidence that has been given, I would only put your Lordſhip in mind of one Caſe; and that was the Caſe of Sir *Samuel Barnardiſton*: and the great Evidence there, was the proof of its being his Hand-writing; and that being proved, was ſufficient to Convict him of a Libel: for they could not believe Sir *Samuel Barnardiſton* was Guilty of making Libels, unleſs they were proved to be his Hand-writing.

Sir *Robert Sawyer*. He owned them to be his Hand-writing.

L. C. J. If you do expect my Opinion in it; whether this be good Evidence, and whether this Paper be proved or no; I am ready to give it.

Mr. *Finch*. My Lord, I deſire to be heard before the Opinion of the Court be given.

Mr. *Sol. Gen*. If there be not proof enough to induce the Jury to believe this is their Paper; yet ſure there is enough to Read it.

Sir *Robert Sawyer*. My Lord, we have not been heard to this yet.

Mr. *Sol. Gen*. Why, is this fit to be ſuffered?

L. C. J. Mr. *Sol*. I am always willing to hear Mr. *Finch*.

Mr. *Sol. Gen*. But I hope your Lordſhip, and the Court, are not to be Complemented into an unuſual thing.

Mr. *Serj. Pemberton*. It is not a Complement, but Right and Juſtice.

Mr. *Sol. Gen*. Certainly it is Right and Juſtice, that there ſhould be ſome limits put to Men's ſpeaking, that we may know when to have an end.

Sir *Robert Sawyer*. Mr. *Sollicitor* does miſtake the right, my Lord, for we deſire to be heard to this Point; as not having ſpoke to it yet.

Mr. *Sol. Gen*. Pray, Sir, let me make my Objection to your being heard: for I believe you and I have been chid ſeveral times, for ſpeaking over and over the ſame thing.

Sir *R.*

Sir *R. Sawyer.* This that we now offer, is not to the ſame Point, that we have ſpoken to already.

Mr. Sol. Gen. We are now ſpeaking to the Reading of the Paper, and you have ſpoken to it already.

Sir *R. Sawyer.* If the Court will pleaſe to hear us, we have that to offer againſt the Reading of that Paper, which has not been offered yet.

L. C. J. Sir *Robert Sawyer*, I take it, it is in the Breaſt of the Court to hear when they will, and as much as they will, and whom they will; for if Three or Four have been heard of a ſide to ſpeak what they will, the Court may very well depend upon the Learning of thoſe Three or Four, that they ſay what can be ſaid upon the Point, and that's enough; but if Six or Seven deſire to be heard over and over to the ſame thing, certainly the Court may ſtop at Three or Four, if they will.

Sir *R. Sawyer.* This is a new Objection that none of us have been heard to yet.

Mr. Finch. My Lord, that which I offer is not contrary to the Rules of Law, nor contrary to the Practice of the Court; nor was I going any way to invade that Priviledge which Mr. *Sollicitor* claims of making Objections, and not receiving an Anſwer.

Mr. Sol. Gen. What a fine Declamation you have now made! I never claimed any ſuch right; but I oppoſe your being heard over and over to the ſame thing.

Mr. Att. Gen. Pray, my Lord, let's come to ſome Iſſue in this matter.

L. C. J. I will hear you; but I would not have you introduce it with a reflection upon the King's Council.

Mr. Sol. Gen. My Lord, if you impoſe that upon him, you ſtop his Mouth; for ſome Men cannot ſpeak without reflection.

L. C. J. On the other ſide, pray Mr. *Sollicitor*, give us leave to hear fairly what they have to ſay; for, I perceive, he cannot offer to ſpeak, but you preſently ſtop his Mouth.

Mr. Finch. My Lord, that which I was going to ſay, is another matter than any thing that has been yet offered: We ſay, that this Paper ought not to be Read; for that they are obliged by Law to prove their Information; and conſequently, having laid a particular place where the thing was done, in the Information, they ought to prove that this was done in that place. The Evidence that they have given, is of my Lords the Biſhops Writing this Paper; and they have laid it to be done in *Middleſex*: and this, with ſubmiſſion to your Lordſhip, is local; and they muſt prove it to be Written in *Middleſex*, where they have laid it, or elſe they fail in their proof. This is another Objection, which as yet hath not been ſpoken to: That if there be a proof of their Hand-writing, yet there is no proof where that Hand was Written; and therefore they are not yet got ſo far, as to have it Read againſt my Lords.

Mr. Att. Gen. For that Point, my Lord, we ſay, This would have been as properly ſaid after the Paper had been Read, when they come to make Objections againſt our Proof, by way of Defence: and, with ſubmiſſion, it had been more proper then, than it is now: For what are we now doing? My Lord, we are Proving that ſuch a Paper was Subſcribed by my Lords the Biſhops; and Sir *John Nicholas* gives you an Account, that he had it from his Majeſty at the Council: and that certainly is in the County of *Middleſex*; and it will concern you to Prove that it was Written elſewhere.

Mr. Serj. Pemberton. That's very well Mr. *Attorney*; ſure you do not think as you ſpeak.

Mr. Att. Gen. Here is a Paper Compoſed and Written by you, that Sir *John Nicholas* ſays he had from his Majeſty: how he came by it, I ſuppoſe you will tell us by and by: this is your Hand-writing, that I think we have proved ſufficiently; this is found in the County of *Middleſex*: and you come and tell us, that we muſt Prove that it was Written in the County of *Middleſex*; and it is taken to be Written where it was found, unleſs you Prove the contrary.

Mr. Serj.

Mr. Serj. Pemberton. That's pretty Doctrine indeed, and very new.

Mr. Sol. Gen. My Lord, here's an Objection made too timely: we are now upon Reading of this Paper: and the Queſtion is, Whether it ſhall be Read or not be Read. Surely we have given Evidence enough to induce the Court to Read it: and it is another Queſtion, that will come time enough afterwards; Where it was Written?

L. C. J. Truly, I do not think it was proper for you to ſtand upon the Place where it was Written as yet.

Mr. Serj. Levinz. When we are upon an Information of a Fact in *Middleſex*, will you hear them give Evidence of a Fact in *Yorkſhire?*

Mr. Sol. Gen. We are not to be driven by theſe Gentlemen; we are to be directed by the Court.

L. C. J. I think truly it is yet too early to make this Objection.

Mr. Serj. Pemberton. Surely, my Lord, this is our time to oppoſe the Reading of it, as not proved.

Mr. J. Powell. Mr. *Sollicitor*, I think you have not ſufficiently proved this Paper to be Subſcribed by my Lords the Biſhops.

Mr. Sol. Gen. Not to Read it, Sir?

Mr. J. Powell. No, not to Read it, it is too ſlender a Proof for ſuch a Caſe: I grant you, in Civil Actions a ſlender proof is ſufficient, to make out a Man's Hand, by a Letter to a Tradeſman, or a Correſpondent, or the like; but in Criminal Cauſes (ſuch as this) if ſuch a proof be allowed, where is the ſafety of your Life or any Man's Life here.

Mr. *Sol. Gen.* We tell you a Caſe where it was allowed; and that is Mr. *Sidney*'s Caſe; a Caſe of Treaſon, and Printed by Authority: We tell you nothing, but what was done to'ther day.

L. C. J. I tell you what I ſay to it; I think truly there is proof enough to have it Read: and I am not aſhamed nor afraid to ſay it; for I know I ſpeak with the Law: ſay what you will of Criminal Caſes, and the danger of Peoples Lives; there were more danger to the Government, if ſuch proof were not allowed to be good.

Mr. *J. Powel.* I think there is no danger to the Government at all, in requiring good proof againſt Offenders.

L C. J. Here's my Lord Archbiſhop and the Biſhop of St. *Aſaph* and my Lord of *Ely*, their Hands are proved; it is proved to be my Lord Archbiſhop's Writing by Mr. *Brookes*, and he proves my Lord of *Ely*'s Hand by Compariſon, and ſo my Lord of St. *Aſaph*'s. Now Brother *Pemberton*, there's an Anſwer to your Objection; it being proved that it is all my Lord Archbiſhop's Hand: then they come and ſay, We'll prove the Hands of the others by compariſon: and for that they bring you Witneſſes, that ſay, They have received Letters from them, and ſeen their Hand-writing ſeveral times: and comparing what they have ſeen with this very Paper; ſays the Witneſs, I do believe it to be his Hand. Can there be a greater Evidence or a fuller?

Mr. Serj. Pemberton. Admit it be a full Evidence againſt my Lord Arch-Biſhop: What's that to the reſt? There's no Evidence againſt them.

Mr. J. Allybone. Brother *Pemberton*, as to the Objection you make of Comparing of Hands; it is an Objection indeed, I do agree: but then conſider the inconvenience which you and Mr. *Pollixfen* do ſo much inſiſt upon: If a Man ſhould be accuſed by Compariſon of Hands, Where is he? He is in a lamentable Caſe; for his Hand may be ſo Counterfeited, that he himſelf may not be able to diſtinguiſh it. But then you do not conſider where you are on the other ſide: that may be an Objection in matters of Fact, that will have very little weight, if compared and ſet altogether. For, on the other ſide, where ſhall the Government be, if I will make Libels, and traduce the Government with Prudence and Diſcretion, and all the ſecrecy imaginable? I'll Write my Libel by my ſelf, prove it as you can; that's a fatal blot to the Government; and therefore the Caſe is not the ſame; nor is your Doctrine to paſs for current here; becauſe every Caſe depends upon its own Fact. If I take upon me to Swear I know your Hand, the inducements are to my ſelf, how I came to know it, ſo as to Swear it: Knowledge

depends

depends on Circumſtances; I ſwear that I know you, but yet I may be under a miſtake, for I can have my knowledge of you no other way but from the viſibility of you, and another Man may be ſo like you, that there is a poſſibility of my being miſtaken; but certainly, that is Evidence, and good Evidence: Now here are ſeveral Gentlemen that ſwear as to my Lord Archbiſhop's Hand-writing; I do agree, as to ſome of the others, that the Evidence is not ſo ſtrong; for what that Man ſaid, that he did believe it was rather ſuch a Lord's Hand, than that which went before, or that which came after, it is of no weight at all, and ſo ſome of the others; but it is poſitively proved againſt my Lord Archbiſhop and one or two more; ſo that that's enough to induce the reading of this writing.

Mr. Juſt. Holloway. Good my Lord, let me give my opinion.

L. C. Juſt. Ay, withall my heart, Brother.

Mr. Juſt. Holloway. My Lord, I think as this Caſe is, there ought to be a more ſtrong proof, for certainly the proof ought to be ſtronger and more certain in Criminal matters than in Civil matters; in Civil matters, we do go upon ſlight proof, ſuch as the compariſon of Hands, for proving a Deed, or a Witneſſes Name, and a very ſmall proof will induce us to read it; but in Criminal matters we ought to be more ſtrict, and require poſitive and ſubſtantial proof, that is fitting for us to have in ſuch a Caſe, and without better proof, I think it ought not to be read.

L. C. Juſt. You muſt go on to ſome other proof Mr. *Sollicitour*, for the Court is divided in their Opinions about this proof.

Mr. Soll. Gen. Then, my Lord, we will come to the Confeſſions of my Lords the Biſhops, and I hope that will be believed by all Man-kind.

Mr. Att. Gen. Truly my Lord, we did forbear that Evidence, and would not have proceeded this way, if we had had fair play on the other ſide.

Sir Ro. Sawyer. Mr. Attorney, give us leave to defend our Clients all the ways we can; I think we doe nothing but what is fair; the Court you ſee is divided, therefore we did not without reaſon inſiſt upon it.

L. C. Juſt. You muſt go on as you can, for they will put you upon it.

Mr. Att. Gen. Swear Mr. *Blathwayt.*

Mr. Blathwayt *Sworn.*

Mr. Soll. Gen. Pray hand the writing to him.

The writing ſhown to him.

Mr. Soll. Gen. Have you ſeen that writing formerly Sir?

Mr. Blathwayt. Yes, Sir.

Mr. Soll. Gen. What did you hear my Lord Arch-Biſhop ſay about that Paper?

Mr. Att. Gen. And the reſt of my Lords the Biſhops.

Mr. Soll. Gen. Firſt we'll ask as to my Lord Arch-Biſhop; did he own it to be his Hand-writing?

Mr. Blathwayt. My Lord, I believe this to be the Paper that my Lord Archbiſhop did own to be ſubſcribed by him.

Mr. Soll Gen. When was it owned by him?

Mr. Blathwayt. On the Council day, the Eighth of this Month.

Mr. Soll. Gen. Where was it owned, becauſe we would obviate that Objection of the County?

Mr. Blathwayt. It was at the Council Table at *Whitehall.*

Mr. Soll. Gen. What ſay you to the Biſhop of St. *Aſaph*? Did he own it?

Mr. Blathwayt. Yes; All my Lords the Biſhops did own it?

Mr. Soll. Gen. Name them particularly; what ſay you the Biſhop of *Ely?*

Mr. Blathwayt. In the ſame manner, my Lord.

Mr. Soll. Gen. The Biſhop of *Chicheſter*?

Mr. Blathwayt. In the ſame manner.

Mr. Soll. Gen. The Biſhop of *Bath* and *Wells*?

Mr. Blathwayt. Yes, my Lord.

Mr. Soll. Gen. The Biſhop of *Peterborough?*

Mr. Blathwayt. Yes, my Lord.

Mr. Soll. Gen. And the Biſhop of *Briſtol?*

Mr. Blathwayt. Yes, my Lord.

Mr. Soll. Gen. So; We have proved they all owned it.

Mr. Juſt. Holloway. Could not this have been done at firſt, and ſaved all this trouble?

Sir Rob. Sawyer. Have you done with Mr. *Blathwayt*, Mr. Attorney, that we may ask him ſome queſtions.

Mr. Att. Gen. Ask him what you will.

Mr. Ser. Pemb. Pray, Mr. *Blathwayt*, upon what occaſion did they own it, you are Sworn to tell the whole truth; pray tell all your Knowledge, and the whole Confeſſion that they made.

Mr. Blathwayt. My Lord, I am called here by a *Subpœna* to anſwer on behalf of the King; my Lord, I am ready to doe my duty, and I beg of your Lordſhip that you would pleaſe to tell me what is my duty; for whatſoever I ſhall anſwer, I ſhall ſpeak the truth.

Mr. Ser. Pemb. There is nothing deſired, but that you would ſpeak the truth.

Mr. Blathwayt. My Lord, I am eaſily guided by your Lordſhip what I ought to anſwer to.

L. C. Juſt. What is it you ask him, Brother *Pemberton?*

Mr. Ser. Pemb. We deſire Mr. *Blathwayt* to tell the whole diſcourſe that paſſed at the Council, when he ſays my Lords the Biſhops owned this Paper.

Mr. Soll. Gen. That's a very pretty thing indeed.

L. C. Juſt. Look you, Mr. *Blathwayt*, you muſt anſwer them what they ask you, unleſs it be an enſnaring Queſtion, and that the Court will take care of.

Mr. Blathwayt. If your Lordſhip pleaſe to ask me any Queſtion, I ſhall readily anſwer it.

L. C. Juſt. You muſt anſwer them.

Mr. Ser. Pemb. We ask you upon what occaſion they came to own their Hands? What diſcourſe was made to them, and what they anſwered?

Mr. Blathwayt. My Lord, I beg your Lordſhip's directions.

L. C. Juſt. Come, tell it, Sir.

Mr Blathwayt. My Lord, the occaſion was this; This Paper was read in Council, and I had the honour to read it before the King, and it having been read before his Grace the Arch-Biſhop, and my Lords the Biſhops, they were asked whether they did own that Paper, and, my Lord, they did own it.

Sir Rob. Sawyer. Mr. *Blathwayt*, was that the firſt time that my Lords the Biſhops came in?

Mr. Blathwayt. Sir I was not asked that Queſtion.

L. C. Juſt. What would you have, Sir *Robert Sawyer?*

Sir Robert Sawyer. We would have an account what paſſed at the Council.

L. C. Juſt. Would you have all the Diſcourſe betwixt the Council and my Lords the Biſhops?

Mr. Ser. Pemb. All that relates to their Accuſation, my Lord, their whole Confeſſion, and what was ſaid to them.

Mr. Att. Gen. Do you think, Mr. Serjeant, that when we call a Witneſs, you are at liberty to examine him to every impertinent thing?

Mr. Soll. Gen. My Lord, we deſire that they may only ask reaſonable and proper Queſtions.

Mr. Ser. Pemb. Mr. Sollicitour he is ſworn to anſwer and tell the whole truth, and that's all we ask of him.

Sir Rob. Sawyer. Sir, I will ask you a plain Queſtion upon your Oath, did not my Lord Arch Biſhop, and the reſt of my Lords the Biſhops, at firſt refuſe to own it, or to anſwer whether it were their Hands or not?

Mr. Soll. Gen. That is not a fair Queſtion Sir Robert *Sawyer*; 'tis a leading Queſtion.

Mr. Ser. Pemb. Then I ask you in ſhort, what did they refuſe? I am ſure that is a fair Queſtion, for God forbid that any ſhould hinder the King's Evidence from telling truth.

Sir Rob. Sawyer. And God forbid that half Evidence ſhould condemn any man.

L. C. Juſt. God forbid the Truth ſhould be concealed any way.

Mr. Ser. Pemb. Pray, Sir, when they were firſt asked, whether that was their Hands or not, what anſwer did they give?

Mr. Blathwayt. Sir, I have begged the favour of my Lords the Judges to tell me what I am to anſwer, and what Queſtions are proper for me to anſwer to.

L. Ch.

L. Ch. Juſt. You muſt anſwer any Queſtions that are not enſnaring Queſtions.

Sir Robert Sawyer. Mr. *Blathwayt*, you are upon your Oath to teſtifie the Truth.

Mr. Blathwayt. Sir, I am not acquainted with the Methods of Law, I deſire my Lords the Judges would inſtruct me.

Mr. Juſt. Allibone. Anſwer to the Queſtion that they ask you.

Ld. Ch. Juſt. We obſerve what they ask you; we'll take care that they ask you nothing but what they ſhould.

Mr. Blathwayt. I deſire the Queſtion may be repeated.

Mr. S. Pemberton. When they were firſt asked if it were their Hands, what anſwer did they give the King?

Mr. Blathwayt. His Grace the Archbiſhop, and my Lords the Biſhops, at firſt did not immediately anſwer whether the Paper were theirs or no.

Mr. S. Pemberton. What did they ſay?

Mr. Blathwayt. They ſaid they did humbly hope, if they were put to anſwer, no advantage ſhould be taken againſt them.

Mr. S. Pemberton. What did they ſay farther at that time concerning His Majeſties pleaſure?

Mr. Soll. Gen. That's a leading Queſtion, Mr. S. *Pemberton*, you cannot leave your way of leading Witneſſes.

Mr. S. Pemberton. It is a very ſtrange thing; if we ask a queſtion that's general, that's excepted to; if we ask any queſtion in particular, then they find fault with us, that it is a leading Queſtion; ſo that we can never ask a queſtion that will pleaſe them. Pray Mr. *Blathwayt*, what did they ſay concerning the King's pleaſure, whether they would anſwer if the King commanded them?

Mr. S. Trinder. How can it be material what they ſaid?

L. Ch. Juſt. It is material that it ſhould be asked, and that it ſhould be anſwered.

Mr. S. Levinz. You are to tell the whole Truth, Sir, Pray tell us what did my Lords the Biſhops ſay about ſubmitting to the King's pleaſure?

Mr. Soll. Gen. What is that to the purpoſe?

Mr. Pollixfen. Mr. Sollicitour, his Oath is to tell the truth, and the whole truth, and therefore he muſt anſwer my queſtion.

Mr. S. Pemberton. You are mighty loth, Mr. Sollicitour, to let us hear the truth; I would not willingly lead him in any thing, and I cannot ſee that this is any leading queſtion, unleſs his Oath be againſt Law, which ſays he is to tell the whole truth.

Mr. At. Gen. My Lord, I do beg your Lordſhip's favour of a word in this thing: It is certain, if they ask any thing that ſhall take off the Evidence that was firſt given, that it is not true, I cannot oppoſe it; but if they ask queſtions onely to enflame, and to poſſeſs people with fooliſh notions, and ſtrange conceits, that is not to the fact that we are now trying——

Sr. Rob. Sawyer. 'Tis onely to have the truth out that we doe it.

Mr. S. Pemberton. There is no body here that will be enflamed, Mr. Attorney; I have asked a fair queſtion, the Court has ruled it ſo.

Mr. Blathwayt. I ſhall readily anſwer any queſtion that the Court thinks fit.

Mr. S. Pemberton. Sir, by the Oath you have taken you are to tell the whole truth.

L. Ch. Juſt. Is he to tell you all that was done at the Council board that day?

Mr. S. Pemberton. No, my Lord; onely what paſſed there about my Lords the Biſhops Confeſſion, the whole of that matter.

Mr. Blathwayt. There has been ſo much ſaid between the asking of the queſtion and this time, that I deſire it may be repeated, that I may know what to anſwer to.

Mr. S. Pemberton. I ask you in ſhort, Sir, What did my Lords the Biſhops ſay at the time of their appearing in Council concerning the King's pleaſure, whether they ſhould anſwer or not?

Mr. Blathwayt. The firſt time my Lords the Biſhops came into the Council, they were asked the queſtion whether they did own that Paper; they did immediately anſwer, They humbly hoped, as they ſtood there Criminals, HisMajeſty would

would not take advantage againſt them, but however they would obey His Majeſties Command.

Sir Rob. Sawyer. Were they commanded to withdraw?

Mr. Blathwayt. Yes, thereupon they were commanded to withdraw, which they did.

Mr. S. Pemberton. When they came in again what queſtions were asked them?

Mr. Blathwayt. They came in ſeveral times, more than twice, I have reaſon to remark this, that they did ſo; Do you mean the ſecond time, Sir?

Mr. S. Pemberton. Yes, Sir.

Mr. Blathwayt. The ſecond time they ſeemed unwilling to own the Paper.

Sir Rob. Sawyer. And what did they doe the third time.

Mr. S. Pemberton. But firſt let us know what more was done the ſecond time.

Sir Geo. Treby. How was that unwillingneſs of theirs overcome?

Mr. S. Pemberton. When they expreſt their unwillingneſs what did they ſay farther?

Mr. Blathwayt. If I remember right, they ſaid as they did the firſt time, they humbly hoped His Majeſty would not take advantage againſt them.

Mr. S. Pemberton. Then what did they ſay the third time?

Sr. Rob. Sawyer. Pray, were they asked whether they publiſhed it?

Mr. Blathwayt. As to the publiſhing it, it was laid before them, and I think they were asked the queſtion whether they publiſhed it?

Sir Rob. Sawyer. And what anſwer did they make?

Mr. Blathwayt. I remember His Grace, and my Lords the Biſhops, did not own they had publiſhed it, but they denied it.

Sir Geo. Treby. After they diſcovered their unwillingneſs the ſecond time, what followed next?

Mr. *Blathwayt.* They did withdraw after the ſecond Attendence.

Mr. S. *Levins.* But what was ſaid to them? Was that all that was ſaid to them the ſecond time?

Mr. *Blathwayt.* I have ſaid two things already, that they were unwilling to anſwer, and that they denied the publiſhing.

L. Ch. Juſt. This is ſtrange uſage of a Witneſs, to put him to tell every thing that was ſaid.

Mr. S. *Pemberton.* I would ask you this queſtion, Sir, When they came in the ſecond time, whether they did deſire to know if it were His Majeſties Command that they ſhould own it?

L. Ch. Juſt. That I muſt not permit you to ask, Brother, that is to lead the Witneſs.

Mr. S. *Pemberton.* My Lord, he will not anſwer general queſtions; I have asked him all along general queſtions, and I cannot get an anſwer from him to them.

Mr. *Blathwayt.* I am ready to anſwer any queſtions that the Court thinks I ſhould anſwer; I am not backward to anſwer according to my duty.

L. Ch. Juſt. Let one of you ask a queſtion at a time, and not chop in one upon another.

Mr. *Soll. Gen.* In all the Tryalls that ever I have been in, in all the Caſes of Criminals, the King's Witneſſes uſed to be treated with reſpect, and not to be fallen upon in this manner.

L. Ch. Juſt. He ſhall be ſure to have all reſpect paid him.

Mr. *Soll. Gen.* He is in Office under the King.

Mr. S. *Pemberton.* I do not think Mr. *Blathwayt* does believe I would ſhew him any diſreſpect, more than he would ſhew me.

Mr. *Att. Gen.* I beg one word, my Lord.

L. Ch. Juſt. Mr. Attorney, What do you ſay?

Mr. *Att. Gen.* My Lord, I ſay I do oppoſe the asking of this queſtion, not but that every man has a right to croſs examine a Witneſs, but if they ask ſuch a queſtion, let them tell us what uſe they would make of it.

L. Ch. Juſt. Mr. Attorney General, for that matter——

Mr. S. *Pemberton.* My Lord, if you pleaſe I'll give Mr. Attorney an anſwer.

L. Ch. Juſt. Brother *Pemberton*, I was ſpeaking to Mr. Attorney, and pray hear me, I will not ask you what uſe you'll make of the queſtion you ask, but do you ask fair and regular queſtions, and I'll take care you ſhall have an anſwer to them.

Mr. S. Pem-

Mr. Serj. *Pemberton.* I will deal plainly with the Court, and tell you what uſe we intend to make of our queſtion; if they anſwered under a Promiſe from His Majeſty, that it ſhould not be given in Evidence againſt them, I hope they ſhall not take advantage of it.

Mr. *Soll. Gen.* I ſay that is a very unmannerly queſtion, but however it ſhall be anſwered.

Mr. Serj. *Pemberton.* Why ſo, Mr. Sollicitour?

Mr. *Soll. Gen.* My Lord, it is to put ſomething upon the King which I dare hardly name.

L. *C. Juſt.* We do not know what Anſwer will be made to it yet, but it does look like an odd kind of queſtion.

Mr. *Soll. Gen.* If men will be ſo preſſing, I, for the King, deſire the queſtion may be entred.

Sir *R. Sawyer.* What do you mean, Mr. Sollicitour?

Mr. *Soll. Gen.* I know very well what I mean, Sir; I deſire the queſtion may be recorded in Court.

Mr. Serj. *Pemberton.* Record what you will, I am not afraid of you, Mr. Sollicitour.

Mr. *Soll. Gen.* Are you afraid of the Law?

Mr. Serj. *Pemberton.* No, nor of you neither.

L. *C. Juſt.* Pray be quiet, Gentlemen.

Mr. *Att. Gen.* Pray, Mr. *Blathwayt*, anſwer whether there was any promiſe made to my Lords the Biſhops from the King.

Mr. *Blathwayt.* My Lord, I take the queſtion to be, whether the King was pleaſed to make my Lords the Biſhops any promiſe of not taking advantage of what anſwer they made.

Mr. *Att. Gen.* That is the queſtion.

Mr. *Blathwayt.* As that queſtion is ſtated there was no ſuch made.

L. *C. Juſt.* Look you, he tells you there was no ſuch promiſe made; there is an Anſwer to your Queſtion, Brother.

Mr. Serj. *Levinz.* We made no ſuch queſtion; but the queſtion I would ask is this,——

Mr. *Soll. Gen.* For the ſatisfaction of the Court repeat what you ſaid juſt now, Mr. *Blathwayt.*

Mr. *Blathwayt.* I take the queſtion to be, whether the King made any promiſe to my Lords the Biſhops, that no advantage ſhould be taken of what they ſaid, and I ſay the King made no ſuch promiſe.

Mr. Serj. *Pemberton.* We did not ask you the queſtion, but we only told you what uſe we would have made of another queſtion.

Mr. *Pollixfen.* Mr. *Blathwayt*, I ſee you can very well diſtinguiſh what queſtions are to be anſwered; I ask you in ſhort upon your Oath, When they were firſt called in, what was ſaid to them, and what was anſwered by them?

L. *C. Juſt.* Here has been a great deal of wrangling, but this is a fair queſtion, and may reduce us to order again; tell us over again from the beginning what paſſed when my Noble Lords the Biſhops came in the firſt, ſecond, and third time, when they were examined about this Paper?

Mr. *Blathwayt.* My Lord, I ſhall comply with your Lordſhip's Directions, I apprehend I am to anſwer together concerning the firſt, ſecond, and third comings in of my Lords the Biſhops into the Council. The firſt time, (as I ſaid before,) my Lords the Biſhops were unwilling to own the Paper, and did ſay they humbly hoped His Majeſty would not take advantage againſt them, but that they were ready to obey his Command. The ſecond time they were called in they did repeat it again, that they hoped His Majeſty would not take advantage againſt them; after that there was mention made of the Paper being publiſhed, I remember my Lords the Biſhops ſaid they had not publiſhed it.——

Sir *R. Sawyer.* Is that all?

Mr. *Att. Gen.* You have no mind to hear all, I think.

L. *C. Juſt.* How do you expect to be anſwered your queſtions, if you interrupt them? Go on, Mr. *Blathwayt.*

Mr. *Blathwayt.* Sir, I ſaid laſt, that they having prayed the King that no advantage might be taken againſt them for what they ſhould ſay, there was mention made of the Paper its being publiſhed, and my Lords the Biſhops did ſay they had

not publiſhed it; and His Grace my Lord Archbiſhop ſaid it was written with his own Hand, and that he had not made uſe of his Clerk.

Sir. *R. Sawyer.* Is that all you can remember that paſſed at that time?

Mr. *Blathwayt.* This is the ſubſtance of what I remember.

L. *C. Juſt.* Was this the third time?

Mr. *Blathwayt.* No; that was the ſecond time, my Lord.

Mr. *Pollixfen.* If there be not ſome order in this Evidence, my Lord, we ſhall not be able to obſerve any thing upon it.—— Pray what was done afterwards?

Mr. *Blathwayt.* My Lord Chancellour, upon their coming in, did require them to anſwer whether they did own that Paper or not; my Lords the Biſhops did own the Paper.

Mr. *Pollixfen.* Do you remember in what words or expreſſions (as near as you can) they did own it?

Mr. *Soll. Gen.* Is this a practice to be endured?

Mr. *Finch.* Why, he may apprehend and take that to be an owning of it which was not.

Mr. *Soll. Gen.* Has not he ſworn the manner of it, and almoſt the very words?

Mr. Serj. *Levinz.* We deſire nothing of him but that he will tell us what words they ſaid when they owned it.

Mr. *Blathwayt.* It was the third time that they came in, that they owned it.

Mr. Serj. *Pemberton.* Why, what did they ſay?

Mr. *Blathwayt.* My Lord Chancellour required them to anſwer, whether they owned the Paper or no.

Mr. Serj. *Pemberton.* What did they ſay then?

Mr. *Blathwayt.* As near as I can remember, His Grace and my Lords the Biſhops did own the Paper.

Mr. Serj. *Pemberton.* What words did they own it in? tell the manner of it.

Mr. *Soll. Gen.* What's this to the purpoſe?

Mr. *Finch.* Mr. *Blathwayt*, Did you take notes of what paſſed there?

Mr. *Blathwtyt.* I anſwer, Sir, I did not take notes, for I attended the King at his Elbow, and did not take notes; Mr. *Finch*, you know the manner of the Council in ſuch caſes very well.

Mr. *Att. Gen.* Then we ask you for the King, becauſe they ſhall not enflame People by ſuch an expreſſion, In what words did they own it, if you can remember?

Mr. *Blathwayt.* Sir, I have declared my memory as well as I can; when the other Clerks come to be examined, if they can tell any more, let them.

Mr. *Soll. Gen.* But we will have no Diſcourſe to enflame the World; Did the King promiſe or declare that no advantage ſhould be taken of their confeſſion?

L. *Ch. Juſt.* I would ask him that queſtion, What was the manner that my Lord Chancellour expreſt himſelf in to them, when they came in the third time?

Mr. *Blathwayt.* Aſſoon as my Lord Chancellour had required them to declare whether they owned that Paper, as well as I remember, His Grace took the Paper in his hand, and it was handed over, or ſhewed, to my Lords the Biſhops, and they owned and declared ſo, juſt as if they ſhould lay it before the Court, juſt ſo: I do not recollect my ſelf of all the circumſtances that paſſed, I only can tell you the ſubſtance.

Holding it forth to the Court.

Mr. *Soll. Gen.* He does not remember what they ſaid particularly.

Mr. *Att. Gen.* Mr. Sollicitour, I know well enough what they mean by the queſtion; I know they would fain poſſeſs the World with a belief that there was ſuch a promiſe made them, and yet they are proſecuted notwithſtanding that promiſe; therefore I do ask you, Mr. *Blaithwayt*, and for the King's Honour I muſt ask it, Did the King make any Promiſe or Declaration, that no advantage ſhould be taken, or uſe made of it.

Mr. *Blathwayt.* The King did not make any Promiſe or Declaration that no advantage ſhould be taken, or uſe made of it.

Mr. *Soll. Gen.* He only put them upon it, whether they did own it or not.

Mr. *Att. Gen.* I ask you upon your Oath, Did my Lord Archbiſhop own it to be his Hand-writing?

Mr. *Blathwayt.* Yes he did, and ſaid he writ it with his own Hand, and would not let his Clerk write it.

Mr. *Att.*

Mr. *Att. Gen.* Did he own the whole to be his Hand-writing, or not?

Mr. *Blathwayt.* Yes, he did.

Mr. *Att. Gen.* Did every one of the Biſhops own their names ſubſcribed to it?

Mr. *Blathwayt.* Yes.

Mr. *Soll. Gen.* Then, my Lord, we pray now that it may be read.

L. *C. Juſt.* I ſuppoſe now they will be content it ſhould be read.

Mr. *Finch.* If your Lordſhip pleaſe to favour me one word, I think it cannot yet be read, and my Objection is this:——

L. *C. Juſt.* I thought you had made all your Objections before, as to the reading of it.

Mr. *Finch.* Pray, my Lord, ſpare us: Here are two parts of this Information; the one is for conſulting and conſpiring to diminiſh the King's Royal Prerogative, and for that end they did make and write a ſeditious Libell; the other part is, that they did publiſh this ſeditious Libell: We are hitherto upon the firſt part, the making and writing of it; both parts are local; untill they have proved the making and writing of it to have been in *Middleſex*, it is not Evidence upon this Information.

Mr. *Soll. Gen.* We have proved it written and publiſhed in *Middleſex*.

Mr. Serj. *Pemb.* The contrivance and writing of a Libell is in itſelf penal, and they may be puniſhed for it, if they be found guilty: Now if they could give an undeniable Evidence concerning the publiſhing of it, that is nothing to this point; but if they ſhould not give ſuch Evidence, or any Evidence at all of the publication, yet if it be proved that it was written and contrived by them, they would be guilty for ſo much, if it be a Libell, and this we ſay is local as well as all the reſt; and therefore we inſiſt upon it, that the writing and contriving muſt as well be proved to be in *Middleſex*, as the publication, for all is local.

L. *C. Juſt.* There is no publiſhing yet proved.

Mr. Serj. *Levinz.* It is true, my Lord, here is nothing of a Publication yet, (with your Lordſhip's favour,) for their Anſwer to His Majeſty in Council was, that they did not publiſh it; all that is ſaid yet, is, that they owned the Paper to be their hands: My Lord, does the owning of that own that it was written in the County of *Middleſex*? or that it was contrived or made there? No ſurely, upon this Evidence the place is clearly at large: My Lord, this might have been done in the County of *Surrey*, or *Somerſet*, or any other County: Their Information is, that they did conſult and contrive to diminiſh the King's Prerogative at *Weſtminſter* in the County of *Middleſex*, and there they did write, and cauſe to be written, this Libell, and there they did publiſh it; ſuppoſe it ſhould be granted that it is proved that this is the Archbiſhop's Hand-writing, and theſe are their Names to it, is there any one Evidence that any thing of this was done in *Middleſex*? and, my Lord, that is the thing they are to prove.

Mr. *Sommers.* If your Lordſhip pleaſe, all matters of Crime are ſo local, that if it be not proved to be done in the County where it is laid, the party accuſed is as innocent, as if he never had done the thing; and, with ſubmiſſion, it is the very point of the Information; that it be proved they are guilty of the Fact in the place where it is laid to be done.

L. *C. Juſt.* This is the ſame thing over and over again; but I am content to hear you, Mr. *Sommers*, at any time; I have told you my opinion about reading of the Paper already, if you'll have it again you may.

Mr. *Pollixfen.* Pray, good my Lord, ſpare us, before it be read.

Mr. *Juſt. Holloway.* Mr. *Pollixfen*, you have not yet had the Directions of the Court for the reading of it.

Mr. *Att. Gen.* My Lord, when this Paper is read, which we pray it may be, we will anſwer their Objections, but at preſent we ſay, they are out of time.

Mr. *Pollixfen.* Good Lord, what a ſtrange thing is this! We object againſt the reading of it, and you'll anſwer us after it is read.

Mr. *Soll. Gen.* Certainly, my Lord, we have done enough to prove that this is a paper owned by them in the County of *Middleſex*, and we pray it may be read.

L. *Ch. Juſt.* Truly I am of the ſame mind I was before, that it is too ſoon to make the Objection, and that the Paper ought to be read.

Mr. *Soll. Gen.* We ſubmit to your Rule.

Mr. *Pollixfen.* If it be the Will of the Court, I have nothing to ſay.

Mr. *Juſt.*

Mr. *Juſt. Powell.* My Lord, The Contrivance and Publication are both matters of Fact, and upon Iſſue joined the Jurors are Judges of the Fact, as it is laid in the Information; but how can they be Judges of a matter of Fact done in another County? and it muſt be preſumed, in favour of Innocence, not to be done in this County, but in another, except they prove it.

Mr. *Att. Gen.* We are not yet ripe for arguing that point.

Mr. *Soll. Gen.* We are ſpeaking only to the Court now for the reading of this Paper, and the Jury are not Judges of that, whether the Paper ought to be read or no; that is merely a matter of Law, and under the direction of the Court; and therefore I pray, ſince it is now in your Lordſhip's Judgment, whether that Paper ſhould be read, that you would pleaſe to order it to be read.

L. *C. Juſt.* I can only give you my own opinion, let my Brothers give theirs.

Mr. *Juſt. Holloway.* There is no body againſt the reading of it, my Lord; I ſuppoſe my Brother *Powell* is not againſt its being read.

Mr. *Juſt. Powell.* But they ſay the King's Counſel muſt make it out firſt, that the writing of it, and the conſpiring about it was in the County of *Middſ.* or there can be no judgment, ſo much as to read it.

Mr. *Pollixfen.* My Lord, If the Objection be ſaved to us, we ſhall not ſo much oppoſe the reading it, only we would not be ſurprized in point of time.

Mr. *Juſt. Powell.* Nay, if they conſent to the reading, we have no reaſon to hinder it.

L. *C. Juſt.* Brother, I believe they know well enough what they have to ſay for their Clients; let the Paper be read.

Clerk reads: *The Humble Petition of* William *Archbiſhop of* Canterbury——

Sir. *R. Sawyer.* Read the whole Petition; Pray, my Lord, that the whole may read. Read the Top firſt, Sir; to whom it was directed.

L. *C. Juſt.* Read the whole. *Clerk reads:*

To the King's Moſt Excellent Majeſty.

The Humble Petition of William *Archbiſhop of* Canterbury, *and of divers of the Suffragan Biſhops of that Province, now preſent with him, in behalf of themſelves and others of their abſent Brethren, and of the Clergy of their reſpective Dioceſes,*

Humbly ſheweth:

THat the great averſneſs they find in themſelves to the diſtributing and publiſhing in all their Churches your Majeſties late Declaration for Liberty of Conſcience, proceedeth neither from any want of Duty and Obedience to your Majeſty, (our holy Mother, the Church of *England*, being both in her Principles and in her conſtant practice unqueſtionably loyal; and having (to her great Honour) been more than once publickly acknowledged to be ſo by your Gratious Majeſty,) nor yet from any want of due tenderneſs to Diſſenters, in relation to whom they are willing to come to ſuch a Temper as ſhall be thought fit, when that matter ſhall be conſidered and ſettled in Parliament and Convocation; but amongſt many other conſiderations, from this eſpecially, becauſe that Declaration is founded upon ſuch a Diſpencing Power, as hath been often declared illegal in Parliament, and particularly in the Years 1662, and 1672, and in the beginning of your Majeſties Reign; and is a matter of ſo great moment and conſequence to the whole Nation, both in Church and State, that your Petitioners cannot in Prudence, Honour, or Conſcience, ſo far make themſelves parties to it, as the Diſtribution of it all over the Nation, and the ſolemn Publication of it once and again, even in God's Houſe, and in the time of his Divine Service, muſt amount to, in common and reaſonable Conſtruction:

Your Petitioners therefore moſt humbly and earneſtly beſeech your Majeſty, that You will be gratiouſly pleaſed not to inſiſt upon their Diſtributing and Reading your Majeſties ſaid Declaration:

And Your Petitioners (as in duty bound) ſhall ever pray, *&c.*

Mr. *Att.*

Mr. *Att. Gen.* My Lord, we ſhall leave our Evidence here, and hear what they can object to it.

Mr. *Finch.* Have you no farther Evidence, Mr. *Attorney?*

Mr. *Att. Gen.* We leave it here for the preſent.

Mr. *Sol. Gen.* The Gentlemen of the Jury deſire to ſee the Petition.

L. Ch. Juſt. Shew it them.

(The Petition was ſhewn to the Jury.)

Mr. *Finch.* But will you give no farther Evidence, Mr. *Attorney?*

Mr. *Att. Gen.* I tell you we'll leave it here, till we ſee what you ſay to it.

Mr. *Finch.* There is nothing that we ſhould ſay any thing to.

Mr. *Att. Gen.* Make your Advantage of it; if it be nothing, we can have nothing.

L. C. Juſt. What ſay you for the Defendents, Gentlemen.

Mr. *Finch.* My Lord, in ſhort, we ſay that hitherto they have totally failed, for they have not proved any Fact done by us in *Middleſex*, nor have they proved any Publication at all.

Sir *Robert Sawyer.* They have given no Evidence of any thing.

L. C. Juſt. Pray Gentlemen ſpeak One at once, and then we ſhall underſtand the better what we hear.

Sir *R. Sawyer.* My Lord, We ſay, they have given no Evidence of the Conſpiring, Writing, or Pulibſhing in *Middleſex*; Nay, as to the Publication, there is none at all proved.

Mr. *Finch.* Here is no proof of any Publication, nor of the writing or making in *Middleſex*; ſo that there is no proof at all againſt my Lords, the Biſhops.

L. C. Juſt. You heard what Mr. *Blathwayt* ſaid, they owned it in *Middleſex.*

Mr. *Finch.* That is not a Publication ſure, or any Evidence where it was done.

Mr. *Serj. Levinz*, Suppoſe, my Lord, that I own in *Middleſex*, that I robb'd a man in *Yorkſhire*, will that make me guilty in *Middleſex?*

Mr. *Sol. Gen.* But if you had ſtole a Horſe in *Yorkſhire*, and had that Horſe in *Middleſex*, and owned it, I doubt it would go hard with you in *Middleſex?*

Mr. *Sol. Gen.* Mr. Serjeant thinks he has put a very home Compariſon, but we ſhall ſhew how little ſignificant it is by and by.

Mr. *Serj. Levinz.* My Lord, in the firſt place we inſiſt upon it; here is no proof in this Caſe at all, as to the doing of any Fact at all in the County of *Middleſex*; In the next place, this Information and Petition do not agree; for they have brought an Information, and ſet forth, That my Lords the Biſhops under pretence of a Petition did make a Libel, and they have ſet forth no Petition at all, all the Petitionary part is omitted: If I will take part of a man's words, and not the whole, and make a Libel of that part, certainly that is very diſingenuous and injurious; For that part that I omit may alter the Senſe of the whole. They here ought to ſet forth the Petition, with the Direction to the King, and the Prayer at the end, whereby it will appear what the whole is, and what was deſired by their Petition. But, my Lord, to make this matter a little more clear, whatſoever they ſay of its being my Lord Archbiſhop's Hand, we ſhall prove that if it were ſo, it could not be done in *Middleſex*; for we ſhall prove that my Lord of *Canterbury* had not been in *Middleſex* for three or four Months before.

Sir *Robert Sawyer.* Pray let the Information be read, then you will the ſee variance.

Mr. *Att. Gen.* There is not the latter part (we acknowledge) in the Information.

Mr. *Sol. Gen.* There may be, and is, a *ſic Continetur*, and there is no Objection in that at all.

L. C. Juſt. It is *ſic Continetur*, and that's———

Sir *Rob. Sawyer.* The truth of it is, this Information has made a very deformed thing of it, has left it neither Head nor Tail; they ſtyle it a *Petition*, but it is without any *Direction* to any body, and without any *Prayer* for any thing; and without thoſe two it cannot be told what it is.

Mr. *Juſt. Allybone.* Sir *Rob. Sawyer*, if I miſtake not, it is ſaid only under pretence of a Petition.

Sir *Rob. Sawyer.* There may be more in the Paper, than in the Information, and if all were in, one part might explain another.

Mr. *Sol. Gen.* So there may be more; and I wonder to hear that Objection from

Sir *Robert Sawyer*, who has exhibited ſo many Informations for Libells in pieces taken out of Books.

Mr. *Recorder*. All that we alledge in the Information is contained in the Paper, and that's enough for our purpoſe; we are not bound to recite the whole.

L. Ch. Juſt. Indeed I think it is no material Objection at all.

Mr. *Serj. Pemberton*. Truly I think it is very material in this Caſe; here's a Petition that is preferred to his Majeſty; take the whole Petition together, and, ſay they, it is a reaſonable Petition; chop off the Direction and the Prayer, and then here's nothing but the body of a Petition, without beginning or ending; or if a man will ſay any thing concerning the King, and doe it by way of Petition to himſelf, that will alter the Caſe mightily, from a Paper ſpread about, that ſhould contain only the body of a Petition, and nothing elſe.

Sir *Rob. Sawyer*. Pray read that part of the Information.

Mr. *Pollixfen*. If ſo be there be an Information, and that Information charges a man with a pretended Petition, and the Evidence comes and proves a Petition both top and bottom, that is not the Petition in the Information; for that lacking the proper parts of a Petition, is called a pretended Petition, but that which is proved is a real one.

Serj. Baldock. My Lord, there is nothing in this Objection, as this Record hath it.

Mr. *Att. Gen*. Pray, my Lord, give us leave to ſtate it on our ſide, as they have done on theirs, and it will be the better underſtood upon the reading: I hope it is not come to that paſs that they would have it, ſure theſe Gentlemen have not forgot altogether the practice that has been ſo frequent in this Court; if there be an Information for a Libell, Is there any thing more frequent, than only to recite the material part? Sure they may ſay in ſuch a Libell is contained ſo and ſo, without ſetting forth the whole Book.

Mr. *Sol. Gen*. How many Tryalls have we had here, wherein there has been only a Clauſe taken out of a Book; as particularly, *Baxter*'s Bible, and *Johnſon*'s Book, and all by virtue of a *ſic continetur*.

Mr. *Finch*. That comes not up to our Objection here.

Mr. *Juſt. Powell*. Let us hear the Record read, and then we can judge of it.

Sir *Rob. Sawyer*. We pray, Sir, the Information may be read.

Mr. *Att. Gen*. We are here upon all Occaſions chopp'd in upon, and I do not know how they come to take this Liberty; I am ſure other people had it not in former times, when theſe Gentlemen ſtood where we do; as ſoon as ever we offer to ſpeak, preſently there are two or three upon us.

L. Ch. Juſt. Let me hear them, Mr. *Attorney*, make their Objection, and let the Record be read, and that will anſwer that Objection.

Mr. *Att. Gen*. My Lord, as for that other thing, they come and tell us, we have ſet forth a Petition, we ſay no ſuch thing; in the Information we ſay, you compoſed a certain Libell, *pretenſu Petitionis*, in which are contained ſuch and ſuch things; and now I pray let it be read.

Mr. *Sol. Gen*. Pray, my Lord, hear me a little firſt; Take the Information as we have laid it, and I believe there are twenty Preſidents that I could give you in an inſtant of late days practice; ſo was the Information againſt Mr. *Baxter*, ſo was the Information againſt Mr. *Johnſon*, ſo was the Information againſt Doctor *Eades*, and ſo was the Information againſt Sir *Samuel Barnardiſton*: They are all in this form, *ſic continetur*; ſo that as for that matter, we are well enough. But here's another thing (ſay they,) You do not ſet out the Petition; we ſay, it is a Libell, and it is not the Name we rely on, but there is ſuch a Libell, ſo we in our Information call it; if it be not a Libell, then are they very innocent; and whether it be or no, is now in Judgment before your Lordſhip; but if it be as we ſay, then it is not the ſpeaking ill things in the body of a Petition, and then giving it a good Title, and in concluding it with a good Prayer at the end of it; 'tis not, I ſay, any of theſe that will ſweeten this Crime, nor alter, nor alleviate it at all; if there be that which is Seditious and Libellous in the Body of it, call the Paper what you will, and ſmooth it with a Preamble, or a Concluſion, that will not make it any thing leſs a Libell; theſe things are plain and manifeſt: We ſay there is ſuch a thing done, a Libell made, *pretenſu Petitionis*, do you call it what you will; but we ſay, theſe and theſe things are a Libell upon the King and the Government: We have proved our Caſe, we have proved there was ſuch a Paper

under

under their Hands, we have proved it was owned in *Middlesex*, and then we are in your Judgment, whether this be not Evidence sufficient to convict the Defendents.

L. Ch. Just. But they do make an Objection about the Writing and Contriving of it, that it is not proved to be in *Middlesex*.

Mr. *Serj. Trinder.* My Lord, our Information does not go with a continued Clause, that they framed a Libell, *ut sequitur in hac verba*, but we only say, they made a Libell *pretensu Petitionis*, and then we say, *In quo quidem Libello continetur*, so and so; we do not tie our selves up to a particular Recital of all that's in the Paper.

L. Ch. Just. Read the Record.

Clerk Reads:

Ipsi iidem Willielmus Archiepiscopus Cantuariensis, (and the rest) *dicto decimo octavo die* Maii, *Anno Regni dicti Domini Regis nunc quarto supradicto vi & armis, &c. apud* Westmonasterium *praedictum in Comitatu* Middlesexiæ, *praedicto* illicite malitiose seditiose & scandalose quoddam falsum fictum pernitiosum & seditiosum Libellum in scriptis de eodem Domino Rege & Regali Declaratione & Ordine predictis pretensu Petitionis fabricaverunt composuerunt & scripserunt & fabricari componi & scribi causaverunt, *& eundem falsum fictum malitiosum pernitiosum & seditiosum Libellum per ipsos praedictos* Willielmum Archiepiscopum Cantuariensem, (and the rest) *manibus suis propriis respective subscriptum die anno & loco ultimo mentionatis* in præsentia dicti Domini Regis nunc vi & armis, &c. publicaverunt & publicari causaverunt; *In quo quidem falso ficto malitioso pernitioso & seditioso Libello continetur* The humble Petition of, *&c.*———

Mr. *Serj. Levinz.* It is quite another thing; that which is produced from that which is in the Information, by this leaving out a part; for here is the Prayer omitted, and the Direction.

Mr. *Sol. Gen.* Then, my Lord, I think there is nothing in the Case, but this mighty Objection of the County; and, says Mr. *Serj. Levinz*, if my Country-man Confesses in this County, that he stole a Horse in *Yorkshire*, you shall not try him in *London*, but in *Yorkshire*, because by his own Confession the Fact is in another County.

Mr. *Serj. Levinz.* I did not put the Case so.

Mr. *Sol. Gen.* But take the Fact of the Case as it is here; my Lord, the Bishops come in *Middlesex* and own this Paper, my Lord Archbishop owns it to be his Writing, and the rest of the Bishops own their Hands; if they had done as Mr. *Serjeant's Yorkshire*-man did, and said, we own we did this, but it was in the County of *York*, then it would have been like the Case that these Gentlemen put; but here we are in a plain Case of another nature; my Lord Archbishop comes here in *Middlesex*, and owns that he writ the Paper, the other Bishops they signed it; now it does lie certainly in their knowledge where this was done, and they should have declared then; but they have owned it as their Paper, and the signing and writing of it, which is enough for us.

Mr. *Finch.* I own this to be my Paper, therefore I writ it in the County of *Middlesex*; Is that a Consequence, I am very glad they are no better at their Inferences.

Mr. *Sol. Gen.* They have owned the thing in *Middlesex*, that we insist upon, and they have not owned it with any qualification; if they had said, it was done in another County, then you must have taken it to be as they said it; then if they do not distinguish the place of the Fact, your Lordship can only take it to be where they owned it, it would be supposed to be done in that place, for when they owned the Fact, it will be supposed, if they do not say where it was done, that it was done where they owned it, because the King cannot tell where it was done; but the Evidence comes out of their own mouths, they may give satisfaction where it was done, for they know it; and till that be done, the Supposition is against them, that it was done in the place where they owned it; and that is a plain Case, whereseever a man is to speak of his own Fact. Indeed if I publish the Writing of another person which is Libellous, then there must be a particular proof of the place, because it is not my own Fact; but if those Lords publish a Libell that they make themselves, it is in their own knowledge, and in their own power to tell where it was done, because it is their own Act and Deed: It is true, if my Lords had published a Paper that was contrived by some of their Council, it had been some Excuse, and they must have only suffered for that Publication in the place where it was done; but they are here for Writing this

they

they have owned in this County, and therefore it lies upon them to prove it done elſewhere. There is another Objection, my Lord, made, That here is no Evidence of a Publication; my Lord, I take it to be a Publication in it ſelf; Is it poſſible for a man to write a Libell? to ſet his Name? and part with it? and it coming to the hands of the King, that this is not a Publication? It is not their ſaying, we did not publiſh it, that will excuſe them; for can there be a greater Publication in it ſelf than this, when men have ſet their Hands to it, and owned their Names? what makes the Fact in this Caſe? If a Deed be denied to be *factum* of ſuch a one, what is the proof of it, but ſetting the Hand and Seal, and the Delivery? There is owning the Paper, and ſetting their Hands is a Publication in it ſelf, and therefore they cannot make any ſuch Objection. My Lord, if there were occaſion, we have Authorities enough to this purpoſe, and we will give them ſcope enough if they will argue this matter; and if they have any Evidence, we deſire to hear what they can ſay to it.

Mr. *Att. Gen.* As for this matter of Fact, my Lord, if I take it right, they do not Controvert the Publiſhing, but (ſay they) pray make it out, where it was written or compoſed; I confeſs this would be a buſineſs worth the while, for all perſons that act in this manner, and are concerned in making of Libels, to underſtand for their advantage, no man doubts in the matter of Treaſon, but it is local; then put the Caſe a man is found in *Middleſex* with a treaſonable Paper in his Pocket, I do not make a Compariſon, as if this was ſuch a Paper, I hope I am not ſo underſtood, but I only put it as a Caſe, and that the Law is ſo, is beyond all Controverſie; then the man is indicted here in *Middſ.* for framing and compoſing ſuch a Treaſonable Libell, and he comes to be tryed, and (ſays he) Pray prove where I made and compoſed it, for though you found it in my Pocket, in the County of *Middſ.* yet I might doe it in the County of *York*; upon my word, this had been a very good Defence for Mr. *Sidney*, who was indicted, convicted, and attainted, for making a Treaſonable Paper which was found in his Study; might not he have put the ſame Objection? might not Mr. *Sidney* have ſaid (it was great pity he did not underſtand it) pray prove where I did it, for *I* did it elſewhere than in this County.—

Mr. *Sol. Gen.* He did ſay it, *I* remember.

Mr. *Att. Gen.* Truly, my Lord, *I* would not hear any Anſwer given to this, for it would make the King in a very woful Caſe; Here is a Paper that is found in the County of *Middſ.* and this is there owned by you to be written and ſubſcribed by you; pray do you prove it, that it was written elſewhere.

Mr. *Serj. Pemb.* My Lord, we will doe it, we will be governed by Mr. *Attorney* for once.

Mr. *Serj. Levinz.* We will prove that my Lord Archbiſhop was not in *Middleſex*, in ſeven Months before; and truly *I* think *Mr. Attorney's* Caſe of a Paper found about a man, or in his Cuſtody, will not come up to our Caſe; for was this Paper found about us, ſurely that is not pretended.

Mr. *Serj. Pemb.* Your Lordſhip ſees by the very frame of the Petition, that this Petition which they call a Libell, was made after the King's Order concerning reading this Declaration: Now we ſhall prove that my Lord Archbiſhop, whoſe hand-writing they prove this to be, was not out from *Lambeth*-Houſe in two Months before, nor till he was before the Council.

Sr. Rob. Sawyer. Which was long after that time when it was made.

Mr. *Serj. Pemb.* So that this cannot be written in the County of *Middleſex*.

——Call *Francis Nicholls.* ——Mr. *Nicholls* was ſworn.

Sir R. Sawyer. Do you remember the 18th of *May* laſt?

Mr. Nicholls. Yes, Sir.

Sir R. Sawyer. Pray how was it with my Lord Archbiſhop of *Canterbury* at that time, and before that, did he go abroad?

Mr. Nicholls. My Lord, I am very ſure that my Lord his Grace of *Cant.* whom I have ſerved in his Bed-Chamber this ſeven years, never ſtirred out of the Gate of *Lambeth*-Houſe ſince Michaelmas laſt.

Sir R. Sawyer. Till when, Mr. *Nicholls?*

Mr. Nicholls. Not till the time he was ſummoned before the Council.

Mr. Serj. Pemb. Now I hope we have given them a full proof that it could not be in *Middleſ.* ——Call *Thomas Smith.*

Mr. *Smith* was not examined.

Mr. *Finch*

Mr. *Finch.* Truly, my Lord, I think that what we have proved or what Proof we further offer of my Lord of *Canterburies* not being in *Middleſex* for ſo long a time, is *ex abundanti*, and we need it not; for with humble ſubmiſſion, in point of Law, it is incumbent upon them that are to prove the Charge in the Information, to prove where it was done; becauſe, the Locality of it is part of the thing, they ought to prove it; in it's nature it is local, there is a Place aſſigned in the Information, and unleſs they prove it was done in the Place that they have laid, they have not proved the Charge in the Information. Now, my Lord, they have not made any Proof of that, and for proof of Publication, I think they have offered none to your Lordſhip, they never did call it ſo yet, and truly I never did hear or know that the owning of their Hands at the Council-Table was a Publication of a Libel; it is owning the Writing, but it is not an owning where the Writing was made; but where it was written, and where it was made, is of neceſſity to be proved; before the Charge upon a Record, in a Court of Juſtice, can be ſaid to be made out, it is a Local Charge, and in Juſtice, the locality muſt be proved, or the Information fails; my Lord, they have offered no Proof to it, and they have not yet gone to the ſecond part of the Information, for as to the Publication of it, there is not a tittle of Proof offered, but only the owning of their Hands upon their Examination at the Council, and no Man did ever yet think that the anſwering a Queſtion, and owning a Paper at the Council-Table, upon a Queſtion put by the King himſelf was a Publication of a Libel.

Mr. Serjeant *Baldock.* Pray, my Lord, hear me a Word to that; Though the thing be never ſo local, yet there muſt be ſome place where a thing that was done, was done: Then if nothing elſe appears, but what was done in *Weſtminſter*, in the County of *Middleſex*, unleſs they ſhew the contrary, that muſt be the very place where it was done.

Mr. Sollicitor General. Here is a great deal of Prevarication in this matter, and I would obſerve to your Lordſhip how they do uſe the Court ill in it; pray, my Lord, What is it we are upon? we are proving that theſe ſeven Lords, the Biſhops ſigned this Paper; and I think we have proved it ſufficiently out of their own Mouths: But (ſay they) it was not ſigned in the County of *Middleſex*, but in the County of *Surrey*. All this is but Imagination, and they would have the Court to imagine it too; For how do they prove it? They would have your Lordſhip and the Jury believe, That it was ſigned elſewhere, becauſe my Lord Archbiſhop has not been out of his Houſe in ſome Months before; it is all but Inference, and Argument, and Imagination. But ſtill, Gentlemen, do you anſwer what I objected to you? Does it not lie in their Power to ſhew where it was ſigned? Here are ſix more, beſides the Archbiſhop, where was it ſigned by them? Here are ſix of the Biſhops, that it does not appear where they ſigned it; but they confeſs at *White-Hall*, in *Middleſex*, that they did ſet their Hands—

Mr. Serjeant *Levinz.* Ay, they did ſo, and what then?

Mr. Solicitor General. Ay, and ay too; if they did ſo, the Preſumption and Common Intendment upon ſuch Evidence is, That is was done in the Place where it was owned; and the rather, for that Reaſon that I ſaid before, That it lies in their Knowledge, and therefore it is incumbent upon them to prove, That it was not in the County of *Middleſex*: So that this Objection I take rather to be an Invention of the Counſel than the Truth of the Fact, becauſe they that can make this out, do not. And as to what they ſay of my Lord Archbiſhop, That he has not been out of Doors for ſo long, who can prove ſuch a thing? Certainly my Lord was able to come, for any thing that appears; he has been here twice, and he was able to come to the Council-Board: But when all is done, my Lord Archbiſhop is certainly able to put this matter out of doubt, for he may eaſily prove it, if the Fact be ſo, and that will ſatisfie the Court and every Body, That it was ſigned by him at *Lambeth*; if he deſigns to deal ſincerely with your Lordſhip and the Court, and the Jury; but certainly it is not to be proved by a Circumſtance, ſuch a one as this is, but he ought to give your Lordſhip and the Jury Satisfaction about this Fact: He ought to ſay, 'Tis true, I did ſign it, but it was at *Lambeth-Houſe*; that indeed would be a down-right Stroke to us: But to go upon a Suppoſition, That becauſe my Lord Archbiſhop was not out of his Houſe for ſo long together, therefore they are all not Guilty, is a very hard and foreign Inference. My Lord, there's another Matter that they inſiſt upon; and that is about the Publication, that is as plain

as any thing can be, that here is a full Proof of a Publication, for if the Paper be Libellous, where-ever that Paper is, that is a Publiſhing, where-ever the Paper travels, how far ſoever it goes, it is a Publication of it by theſe Perſons that ſigned it: I believe no body thinks that this ſhould fly into the King's hand, but ſome body brought it to him; and certainly, my Lord, if your Opinion ſhould be, that this Paper is Libellous, then where ever it is, it is a Publiſhing, which is our offence; where-ever it is found, it is a Publication; for there is the miſtake of theſe Gentlemen, they fancy, that unleſs there was a Publick Delivery of this Paper abroad, nothing can be a Publication; but I rely upon it, they ſetting their Names to it, made it their Paper; and where-ever it was afterwards found, that did follow the Paper where-ever it went, and was a Publication of it; it was in their Power, being their own Contrivance; it was made and formed by themſelves, and no body will believe, when it was their own Hands that they put to it, that any body elſe could have any power over it; for ought appears, no body elſe was at work about it, and when there were ſo many Learned Prelates that had ſigned ſuch a Paper, no one can believe they would let it go out of their Hands, but by their Conſent and Direction: Is not this a Proof of the Publiſhing? Do they give your Lordſhips any Evidence that they had ſtifled this Paper? If they had ſo done, they had ſaid ſomething, but will any body believe that this thing was done in vain? Can any body aſſign a Reaſon why ſo ſolemn a thing as this ſhould be done to no end and purpoſe? Why a Paper ſhould be framed that rails at the Kings two Declarations? Why a Paper that gives Reaſons why they could not read it in their Churches, and ſigned with ſuch Solemnity by all theſe Noble Lords, we ſubmit this to you in point of Law, and the Law is plain in it, that if this Paper be Libellous, and it is found in the County of *Middleſex*, there is a Publication of that Libel. I ſhall mention to your Lordſhip that Caſe of *Williams*, which is reported in the Second Part of *Roll*'s Reports, Mr. *Finch* made uſe of it in the Caſe of *Sidney*; it was the great Caſe relied upon, and that guided and governed that Caſe (as I apprehend) from the Verdict and Judgment that was given in it. This Caſe was 15 *Jacobi*. It ſeems *Williams* was a Barriſter of the *Inner-Temple*, and it ſeems being an high Catholick for Opinion and Judgment, he was expelled the Houſe, and he being ſo expelled (being a ſort of a *Vertuoſo*) wrote a Book called *Bedlam*'s Aſs, and therein he makes uſe of the Prophecy of the Prophet *Daniel*, and he makes Application of it according to his own particular fancy. He writes there, That this World was near at an end; and he ſaid, Thoſe ill days were come that that Prophecy had ſpoken of, and becauſe of the Impurity of Prince, and Prieſt, and People, and other things that happened, thoſe were the worſt of days, and therefore the laſt; and that certainly we had the worſt Prince that ever was in the World, when he wrote this Book, what does he do? He was a little more cloſe than my Lords the Biſhops, and pins it up, or ſeals it up, and it was brought to the King; and what is this more than the Caſe before your Lordſhip? They indeed ſay, I do this by way of Advice to the King; ſo, ſaid he, I do this by way of Advice to the King, for God forbid that any of this ſhould happen to the King, and ſo what he does was by way of Advice, and he prayed God to avert it from him; here was as good a Prayer as there is in this Paper; and there was a good deſign, he made uſe of the Prophet *Daniel*, and applied his words. Well, what was done upon it? This was never publiſhed; for the Queſtion was before the Court, whether this Sealing of it up, and not delivering it to any other body were a Publication, the Court was of Opinion, that the very Writing of it was a Publication; they did not value the delivery of it to the Prince, but it was proved he Writ it, and that made it Treaſon. My Lord, we have Caſes enough in my Lord *Hobart* for this Matter, Sir *Baptiſt Hick*'s Caſe, and my Lady *Hatton*'s Caſe, there was only a Letter ſealed up and delivered to the Party.

L. C. J. You need not trouble your ſelf about that Mr. Solicitor.

Mr. Sol. Gen. If the Caſe then be thus, I take it, it will turn upon this Fact; they have given your Lordſhip no Proof where this Paper was Signed by them; here are ſeven Perſons that had a hand in it, and here is only one Perſon whom they have inſiſted to be infirm, and kept his Houſe for a great while together. We ſay the Publiſhing follows the Libel where-ever it goes; the Libel is in the County of *Middleſex*, they have confeſſed it in the County of *Middleſex*, and they did not diſtinguiſh where it was done. Then if they will not diſtinguiſh upon the Evidence, no Man ought to diſtinguiſh, but ought to preſume it was done in that place where they owned it.

Mr. Attor.

Mr. Attor. Gen. I did not apprehend we were got ſo far, that they Oppoſed us in the Publication.

Sir *Rob. Sawyer.* Yes we did, for you have given no Evidence of it.

Mr. *Attor. Gen.* Surely, my Lord, for that we have give a ſufficient Evidence, and they have given ſome Proof of it, as to my Lord Archbiſhop; that becauſe he had not been from *Lambeth*, therefore he did not publiſh, nor could cauſe it to be publiſhed; for your Lordſhip ſees by this Information, they are not only to anſwer the *Publicavit*, but alſo the *Publicari cauſavit*; for do you doubt, Gentlemen, of the Law in this Caſe, that if I compoſe a Libel in *Surrey*, for Example, and ſend a Perſon over into *Middleſex*, I am not Guilty of the Publiſhing?

Sir *Rob. Sawyer.* That is not your Caſe, Mr. Attorney.

Mr. *Finch.* That were clear if it were ſo, but it is not ſo.

Mr. *Attor. Gen.* My Lord Archbiſhop's Caſe ſignifies nothing, if we ſhew it was publiſhed in *Middleſex*, and you give no Evidence to the contrary but it might be there; and I am ſure as to the reſt of my Lords the Biſhops, there is no Evidence at all given. Here is a Petition that we ſay is a Libel, they it may be will make that a Queſtion; this is delivered to the King's own Hand in the County of *Middleſex*, and there are as many Caſes as any one Man can name, that this amounts to a Publication by the Party; for if I ſend a Letter by the Poſt ſealed, that no body can ſee but the Party himſelf, and he that writ it, it is adjudged over and over again, it is a Libel.

Mr. Juſtice *Powel.* That you need not labour, Mr. Attorney, for that's the Caſe of *Williams* of *Eſſex*; but how do yon apply it to the Caſe now before us?

Mr. *Attor. Gen.* That's an Anſwer to their Objection as to the Publication.

Mr. Juſtice *Powel.* But what ſay you to the firſt part, you have not proved that it was written in *Middleſex*.

Mr. *Attor. Gen.* There is the Caſe of *Barrow* and *Lewellin* in *Hobart*, and likewiſe the Caſe of Sir *Baptiſt Hicks*, which is reported both in *Hobart* and in *Popham*; and in *Popham*, towards the end of the Caſe, there is a remarkable Paſſage. Says that *Caſe*, If it ſhould not be puniſhable at the Suit of the King, there would be no Remedy; for the Party cannot bring an Action, becauſe he can be no Witneſs for himſelf, and it is only known betwixt them two; but a Witneſs for the King he may be, to prove his own Receipt of the Letter, and the Party's Hand.

Mr. Juſtice *Powel.* You need not labour that Point, I'll tell you, Mr. Attorney; for the Law is very clear in that Point, I think, if you bring it home to your Caſe.

Mr. Attor. Gen. Then here's the Caſe in ſhort, my Lord; That my Lords the Biſhops have cauſed to be made and written this Petition, they are made Parties to it by ſetting their Names, and this is a continued Act; whatſoever is written there is my Lord Archbiſhop's Writing, where-ever it goes, as I'll put you a Caſe that's very well known. If I take away Goods from a Man in the County of *Cumberland*, and I am found with them in the County of *Middleſex*, it is a continued Act, and makes all but one Felony, and I ſhall be Tried here in *Middleſex* for it: If a Man write a thing in one County, and it is ſent and diſperſed in another County, that ſtill continues to be his Fact, though it may be the firſt part was not in the ſame County with the other; but ſuppoſe all this while that part ſhould not affect my Lord of *Canterbury*, the cauſing it to be Publiſhed does.

Mr. Juſtice *Powel.* Do you think, Mr. Attorney, that writing in one County is ſuch a continued Act, that he may be ſaid to write it in another County?

Mr. Attor. Gen. Sir I take it, where there is a complicated Crime of Writing and Publiſhing a Libel, and the beginning of it is in one County, and the carrying it on is in another, that is a continued Act, and may be Tried in either County.

L. C. J. It is all one Act of Libelling (as they ſay.)

Mr. Juſt. Holloway. In Caſes of Felony 'tis ſo, taking in one County, and being found with the Goods in another, it is Felony in either County.

Mr. Juſt. Powel. But in that Caſe they are two Felonies; for it is Robbery in the one County, and but bare Felony in the other.

Mr. Sol. Gen. Suppoſe that my Lords the Biſhops Signed this Paper in another County, and my Lord Archbiſhop conſents to have it ſent into *Middleſex*, is not this a cauſing it to be publiſhed in another County?

Mr. Juſt. Powel. Yes, it may be, if you prove his Conſent.

Mr. Sol. Gen. Then ſuppoſe further, which may very well conſiſt with my Lord Archbiſhop's Evidence, of his not being out of *Lambeth* in ſo long time, the reſt of the

the Biſhops might ſign it in *Middleſex*, or it may be in that Place; and then they carry it by my Lords conſent over hither, into this County, is not this a cauſing it to be publiſhed? the Delivery with his Conſent certainly is a Proof of that, for our Information goes two ways, For Making, Contriving, Writing and Publiſhing, that's one: And then, For cauſing it to be Made, Contrived and Publiſhed, that's the other: And if I prove that he cauſed it to be publiſhed, he may be found Guilty as to that part, and not Guilty as to the other; for the Information is not ſo intire, but that the King has his choice, if the Archbiſhop had not ſigned it, or written it, but had cauſed it to be publiſhed, he may be found guilty of ſo much: But if he be Guilty of any one of theſe things, it is enough; and if he be Guilty of none of the other things laid in the Information; yet if he be Guilty of cauſing it to be publiſhed, by his conſenting that the reſt of the Biſhops ſhould do it, that will be enough to maintain this Information. Then, my Lord, is there any Evidence brought againſt what we have proved, That he did not conſent?

Mr. Juſt. *Powel.* But where was this Conſent of his given, *Mr. Solicitor?*

Mr. Sol. Gen. Pray, good Sir, give me your Favour, I think I am in a plain Caſe.

Mr. Serj. *Pemberton.* So you are truly.

Mr. Sol. Gen. Why, good Sir, you ought to make out the Locality, if you'l take advantage of it.

Mr. Serj. *Pemberton.* That's very well indeed, this is the firſt time I ever heard that Doctrine.

Mr. Sol. Gen. I cannot help that, but certainly the Law is plain, we have proved there was ſuch a Fact as this done; and they do not go about to prove that it was done elſwhere than where we have laid it; for if they did, their Witneſſes would be croſs-examined by us; and then we know what would become of them, then the Truth of the matter would come out: Therefore I would make all this *conſtare*. The Archbiſhop might be at *Lambeth*, and yet Guilty in *Middleſex*, by his Concurrence with what was done in *Middleſex*: And I ſay, my Lord, this is natural, upon the Evidence that has been given, becauſe when they were interrogated at the Council, and confeſſed the Paper to be theirs, they made no ſuch Explanation of their Confeſſion, of which they can make any Advantage in their Defence. Here has been no Body produced that proves any thing to be done out of *Middleſex*; ſo that ſtill if he's Guilty of the Fact proved, he muſt be Guilty in *Middleſex*.

Serjeant *Baldock.* And it does not appear, in this Caſe, but that my Lord Archbiſhop might write the ſame thing in *Middleſex*, tho' he was at *Lambeth* ſo long as the Witneſs ſpeaks of.

Mr. Juſt. *Powel.* How do you make out that, Brother?

Serj. *Baldock.* He might do it when he came over to the Council.

Sir *Rob. Sawyer.* He muſt do it after it was preſented.

Serj. *Baldock.* Might he not be ſo long here on this ſide the Water, as to make ſuch a ſhort thing as this, before it was delivered? half a quarter of an Hour would have done it.

L. Ch. Juſt. That's a thing not to be preſumed, Brother, eſpecially ſince he is proved not to have been in *Middleſex* for ſo long together.

Sir *Rob. Sawyer.* Mr. Serjeant is mightily miſtaken, for it is not pretended, That it was delivered at the time when the Archbiſhop, and my Lords the Biſhops, were before the Council.

Mr. Recorder. Either the Making and Contriving, or the Publiſhing of this Libel will do upon this Information, for they ſhall be taken to be one continued complicated Act; and then the Party may be tryed in either of the Counties, as the King will; as in the caſe of Treaſon, it has been over and over again adjudged: That if a Man does one Act of Treaſon in one County, and afterwards goes into another County, and does another Act of Treaſon, the Jury of either of the Counties may enquire of the Fact done in the other. If they then ſhould take thoſe two as ſeveral Acts, they were ſeveral Offences, and they may be found Guilty of the one and acquitted of the other; but if they are taken as one continued Act, they are but one Offence, and the Jury of either County may try it. If then, in this Caſe, the Jury of this County may take notice of the Publication, which was here, as certainly they may, if they will agree, as the Law certainly is; That the Writing of a Letter will be a ſufficient Publication, if the matter be Libellous. And there are multitudes of Precedents for that; and that the bare ſetting of a Man's Hand

has

has been adjudged to be a Publication: Then give me leave, my Lord, to bring it to a ſimilar Caſe; Suppoſe a Man write a ſcandalous Letter from *London*, to a Judge or Magiſtrate in *Exeter*; and ſends it by the Poſt, and the Letter is received from the Poſt at *Exeter*, and there opened; would any Man make a Queſtion whether the Gentleman that ſent the Letter may not be indicted and proſecuted for a Libel at *Exeter*, where the Libel was received?

Mr. Juſt. *Powel.* There's no queſtion of that, Mr. Recorder; that comes not home to the Fact in our Caſe, undoubtedly in the Caſe that you put, the Law is as you ſaid, but it is far different from this Caſe.

L. Ch. Juſt. There's no Body oppoſes the Publication, but the framing of it where it was made.

Mr. Recorder. Suppoſing then the Party were at *Exeter*; and he were interrogated before the Magiſtrate, Whether that were his Hand or no? and he ſhould own it to be his Hand; can any body doubt whether his owning that to be his Hand, would be a ſufficient Evidence to prove a Publication?

Mr. Juſt. *Powel.* But is that any Evidence where it was written? Or if it be not proved that it was received at *Exeter*, would that be a Proof of a Publication at *Exeter?*

L. Ch. Juſt. They do not deny the Publication.

Sir *Rob. Sawyer.* We do deny that there was any Publication; and they have proved no place where it was made.

Mr. Sol. Gen. My Lord, we are not for turning my Lords the Biſhops out of the way of Proof, that is uſual in ſuch Caſes; let them take it if they will, That this was contrived and made in *Surrey*. But can they publiſh it in *Middleſex*, without committing an Offence? and that is it we ſtand upon: We are not for laying a greater Load upon my Lords the Biſhops than our Proof will anſwer.

Sir *Rob. Sawyer.* We thank you for your Complement, Mr. Solicitor.

Mr. Sol. Gen. Is this a fare way, of interrupting us when we are ſpeaking? Durſt any one have ſerved you ſo when you were in the Kings Service? We would make our Duty as eaſie as we can to my Lords the Biſhops; and it may be eaſier than other Men would have made it. But my Lord, let it be a doubtful caſe, that we cannot tell which County it was made and contrived in, if it were made and contrived in another County; yet when they brought it into *Middleſex*, there was a Publication in *Middleſex*; and if my Lord of *Canterbury* conſented to it, and if he cauſed it to be publiſhed, how can any Body ever get him off from that cauſing of it to be publiſhed? Here is a Paper that muſt be ſuppoſed to be my Lord Archbiſhops Paper: Now either the World muſt look upon it to be an Impoſture put upon my Lords the Biſhops, or a real Paper made by them. If it were an Impoſture and an Affront put upon the Biſhops, they ought to make it out for their own Vindication, and to prove themſelves Innocent: If they do that, they do well, and they ought to have Satisfaction made them by thoſe that have ſo highly injured them; and the King cannot be better pleaſed, I am ſure, than to find them ſo: But if Men will look one way and act another, they muſt expect to be dealt with accordingly. Will any Man that has heard this Evidence, and ſees that theſe Gentlemen will not go the right way to work to prove their own Innocence, believe them to be not Guilty? 'Tis plain they contrived it and ſigned it; for can any one imagine that they ſet their Hands to a Paper that was not formed and contrived by themſelves? then let it go, That this was done in another County, and we cannot puniſh the Writing of it in this County; yet ſtill they are Guilty of cauſing it to be publiſhed in this County, and for that we may puniſh them here: We will be content with having that found that we have proved, which certainly is an Offence.

Sir *Rob. Sawyer.* We oppoſe that, Sir.

Mr. Sol. Gen. You oppoſe it, I know you'l oppoſe common Senſe, we don't ſpeak to you, we ſpeak to the Court; we are content with what is plain, and do not deſire to inſiſt upon any ſtrained Conſtruction; we ſay this is Natural Evidence for us; If this thing be a Libel, as we ſay it is, then the cauſing it to be publiſhed, is an Offence: The Publication we ſay was here in *Middleſex*, and of that there is Clear Evidence, becauſe it was found there, and came from the King's Hand, to whom it was directed, and it could not come to the King's Hand out of their Cuſtody, without their Conſent: This (we ſay) is a clear Evidence of cauſing it to be publiſhed, let the reſt go as it will, becauſe we will take the eaſieſt part of the Caſe, and not go upon Strains.

Mr. Serj. *Trinder*. The greateſt Queſtion is, I think, now come to the Publiſhing ——

L. Ch. Juſt. The Court is of Opinion, that its coming to the King is a publiſhing.

Mr. Juſtice *Powel*. Ay, my Lord, if it be proved to be done by them.

Mr. Serjeant *Pemberton*. Before the Court deliver their Opinion, we deſire to be heard.

L. Ch. Juſt. Brother, you ſhall be heard in good time, but let them make an end on the other ſide, and when the King's Counſel have done we'l hear you.

Mr. Serjeant *Trinder*. My Lord, upon the Queſtion of Publiſhing, it has been inſiſted upon, and the Court ſeems to be very much of the ſame Opinion; That the Writing of it is a Publiſhing: That it is without Controverſie, if the Writing of it fell out to be in *Middleſex*, where the Information is laid; but that they would not have to be ſo by Argument, becauſe the Archbiſhop had kept in at *Lambeth* ſo long. But ſuppoſe, that it were ſo as they would have it; that is only as to the Archbiſhop, he being the Writer of it, but yet notwithſtanding, that the other ſix might ſubſcribe it in *Middleſex*, taking it, that there is ſuch a Face in their Argument as they would have it.

Mr. Sol. Gen. We will lay no greater load on the other ſix than we do upon my Lord Archbiſhop, and we ſay they are all Guilty of the Publication in *Middleſex*.

Mr. Serjeant *Trinder*. Pray Sir, ſpare me; this Paper was in the Archbiſhops Cuſtody and Power, he making of it himſelf; and regularly it could not have come out of his Cuſtody, in common Suppoſition, but it muſt come with his Conſent. It was afterwards in the Power of the other ſix, they had it to ſubſcribe; where the Subſcription was *non conſtat*, they it may be can prove it themſelves, but I will only deduce this Argument; That if it after comes into *Middleſex*, it muſt be taken by preſumption to be ſubſcribed by them there and publiſhed, it muſt taken by Preſumption ſo to be.

Lord Ch. Juſt. No Brother, we ought not to do any thing by preſumption here.

Mr. Juſt. *Powel*. No, no, by no means, we muſt not go upon Preſumptions but Proofs.

L. Ch. Juſt. I will not preſume it to be made in *Middleſex*.

Mr. Serj. *Trinder*. But it is proved to be publiſhed in *Middleſex*.

Sir *Robert Sawyer*. My Lord, with ſubmiſſion, there is no Evidence of the Publication.

Mr. Attor. Gen. That the Court is to judge of.

Sir *Rob. Sawyer*. Pray, good my Lord, what Inſtance of a Publication have they given?

Mr. Sol. Gen. The Court has heard the Evidence, we leave it there.

Sir *Rob. Sawyer*. Was it their owning and acknowledging it was their Hands, when the King asked them the Queſtion at the Council-Table? Surely the King's Counſel won't pretend that was a Publication, when it was done at the King's Command; it was certainly the King that publiſhed it then, and not my Lords the Biſhops.

Mr. Attor. Gen. Well ſaid.

Sir *Rob. Sawyer*. Don't you remember that when Sir *Blathwayt* ſaid the King gave it to be read, and it was ſhewed to the Biſhops?

L. Ch. Juſt. I remember what Evidence Mr. *Blathwayt* gave of the Paſſages at the Council-Board very well; and I know what Mr. Attorney did preſs about the Kings promiſing to take no advantage.

Mr. Attor. Gen. My Lord, Mr. Attorney is on the other ſide, he did not preſs it.

L. Ch. Juſt. Sir *Robert Sawyer* (I mean), I beg both your Pardons, Gentlemen, I think I have done Injury to you both.

Sir *Rob. Sawyer*. My Lord, we ſay there is no Evidence at all, that ever this was ſent to the King by the Archbiſhop, or any of my Lords the Biſhops: And as for the Caſes that they have put, they might have put five hundred Caſes, and all nothing to the purpoſe.

Mr. Sol. Gen. So they might, and done juſt as others had done before them.

Sir *Rob.*

Sir *Rob. Sawyer.* And ſo are theſe ; for here is the Queſtion, We are in a Caſe, where the Publication is that which makes it a Crime : Now I would have them (if they can) put me any ſuch Caſe, and then apply it to this ; in *William*'s Caſe, the Queſtion is quite otherwiſe, and ſo in any Caſe of Treaſon it muſt be ; wherever there is an Overt Act proved, it is the Treaſonable Intention, and the ill Mind of the Traytor that is the Crime, and the Treaſon (the Overt Act) is only to be the Evidence of it : In that Caſe of *Williams*, with ſubmiſſion, my Lord, the Publication was not at all neceſſary, but the very ſecreteſt Act that could be done by him (if it were an Act) is an evidence of the Mind, and ſo the ſending of the Book to the King himſelf, though no body elſe did ſee it, was an Evidence of the Crime of Treaſon, yet it could not be called a Publication. But in the other Caſe of Sir *Baptiſt Hicks*, which was in the *Star-Chamber*, about ſending a Letter of Challenge, it was plainly reſolved that it was no Publication of the Letter, and that was not the ground of the Judgment given againſt him there, that it was the Publication of a Libel, but the very Fact was a particular offence ; for (ſaid the Court there) if you will ſend a Letter to a private Man, and that is a Letter that will provoke him to break the Peace, that is an Offence puniſhable in the *Star-Chamber* ; but that is not the Reaſon which was alledged, becauſe no Action will lie for want of Proof, but quite the contrary ; becauſe they may produce the Porter or Party that brought it, and prove it that it came from this man's hands ; and I do not queſtion but that in the King's Bench at this day, if a man will write a Letter privately to provoke another man to fight, there will lie an Information, but not for a Libel ; for there it will be neceſſary for to make it an Offence, that there be a Publication ; for that is the very form of the Crime, and upon that ground were all thoſe Judgments againſt Libels in the *Star-Chamber*. My Lord, I agree to write a Letter to the King of another Perſon, or to make a Petition to the King concerning another Perſon, as of my Lord Chancellor, or the Judges, or the like, to complain to the King of them ſcandalouſly, with provoking and reviling Language, that is a Publication ; and ſo if I write a Letter to one man of another ; if there be Scandal in a Letter, that is a Publication of a Libel ; and that is the difference that has been always taken, where it is eſſential to make it a Libel, that there be a Publication, ſuch a Publication muſt be proved, and the delivery of a Letter to a man that concerns himſelf, is no Publication, but in this caſe they have not ſo much as proved that it was delivered to the King.

Mr. Serj. *Pemberton.* My Lord, with your Lordſhip's leave, I take it, that they have given no manner of Evidence of a Publication ; to ſay, the writing and ſubſcribing of their Names to a Paper, is a Publication of that Paper, is ſuch a Doctrine truly as I never heard before ; ſuppoſing this Paper had lain in my Study, ſubſcribed by me, but never went further ; would this have been a Publication ? They never ſaid any ſuch thing. As to *Algernoon Sidney*'s Caſe, there was no colour for it, that it ſhould be a Publication ; but it was an Overt Act of Treaſon to compoſe ſuch a Book ; They have proved by our Confeſſion here, that we have ſubſcribed this Paper, they would take it now, that therefore it muſt be preſumed we ſent this to the King, and ſo ſurmiſe us into an Information for making and publiſhing a Libel, which we ſent to the King ; but they do not prove it at all : My Lord, there are a thouſand ways that it might come into *Middleſex*, and perhaps come to the King's Hands too, without our knowledge of Delivery ; and ſure you will not preſume theſe Noble Perſons without Evidence to be guilty of ſuch an Offence as this is ſuggeſted to be ; ſo that, My Lord, and Gentlemen of the Jury, 'tis impoſſible for you to find this a Publication in *Middleſex* ; and for the other thing, (the writing this Paper) they that would make it an Offence, muſt prove where it was done.

Mr. Ser. *Levinz.* My Lord, The Anſwer that I ſhall give to what has been ſaid on the other ſide, is very ſhort ; the Caſes that have been cited are all Law, but not one tittle to this purpoſe : In Sir *Baptiſt Hicks*'s Caſe, and *Williams*'s Caſe, it was proved they all ſent them to the Places whither they were directed ; but is there a tittle of Proof that theſe Biſhops ſent it here ? In all thoſe Caſes, they muſt ſend it either by a Porter or a Carrier, and they ſend it as their own Act, and when it comes there, by their ſending, that is ſufficient Proof of their Act in the place whither it is ſent : And for *Sidney*'s Caſe, there was Treaſon in the very Libel and Book that he made ; and he was not indicted for Publiſhing, but for Treaſon in the place where it was found, becauſe it was found in his poſſeſſion : But was

this

this ever in my Lord Archbiſhops poſſeſſion in *Middleſex*, or the reſt of the Biſhops and were they publiſhing of it? if it had, then it had been their Act clearly: But that is the thing wherein they are defective, that they do not prove that my Lords the Biſhops ſent or brought it here; but upon the Queſtion asked them by the King, they acknowledged it to be their Hands: So that my Lord there is no proof of any Fact done here, but an Acknowledgment of a Fact done, no Body knows where, upon the King's Queſtion here in *Middleſex*; Is that any Proof of this Information?

Mr. *Finch*. Pray, my Lord, ſpare me a Word on the ſame ſide, let us ſee what the Evidence is. The Evidence is this, That the King brought the Paper to the Council-Table, and the Biſhops owned their Hands to it: This is the Effect of the Evidence, and all that is to prove the Forming and Making a Libel in *Middleſex*, and the Publication of that Libel. And what is therefore inferred from thence? why, having proved that the King brought the Paper to the Council-Table, and the Biſhops owned their Hands: Therefore, firſt the Biſhops made this Libel in Middleſex. Secondly, they brought it to the Council-Table, and publiſhed it at the Council-Table, or elſe there is no proof at all: For here is nothing of Evidence given of any Fact, but becauſe they acknowledged it, therefore they made it, therefore they gave it to the King in *Middleſex*: This were good Evidence if they had had the Help of a Suppoſition to make it good; but they want that, nor muſt any ſuch thing be admitted; but I think they are ſuch groſs falſe Conſequences, that I doubt not you'l be of Opinion, Here's no proof of a Publication in *Middleſex*, and then there is no proof at all againſt my Lords the Biſhops.

Mr. *Pollixfen*. I muſt confeſs I hear them ſay two Acts prove a Publication in this Caſe; the one is, the Writing of the Libel, and the Subſcribing. If ſo, then I think upon the Evidence that has been given, the Court muſt needs be ſatisfied, that the Writing of it was in *Surrey*: The next is, their owning their Hands; for there is no Act done that appears, or any Evidence againſt them of any Act done, from the time of the Writing, to the time that they were asked, is this your Hand? Surely no Man would ever think this to be a Publication, where one is asked by Authority, whether ſuch a Paper be his Hand, and he acknowledges it in Anſwer to that Queſtion; to turn this to be a Crime, I think it can never be done, nor never was done before. Then there is nothing in the Caſe, that they can hold to for Evidence, and Proof againſt my Lords the Biſhops, but the Writing; and that is apparent to have been in *Surrey*, or otherwiſe they muſt hold that the Anſwer to the King's Queſtion, this is my Hand, is a Publication. But truly, my Lord, I think neither of theſe will do: But my Lord, to me this is a great Evidence in it ſelf againſt the Proof of a Publication, the Care and Warineſs that has been uſed, that there ſhould be nothing at all of this Matter known, from the time that it was written, to the time that they came to be examined and ſummoned to appear as Offenders. My Lord, the Nature of Libels is to publiſh and proclaim Scandal and Defamation, or elſe it loſes its End, and conſequently its Name: This, as it ſtands upon their Evidence, is a monſtrous Proof for my Lords the Biſhops, againſt the King's Council; for it ſeems, 'tis a very private Matter, ſo cautiouſly and warily carried, that there is not any Evidence of the Fact, but only the Names of the perſons that writ it, till they come to be examined by the greateſt Authority, Is this your Hand? and then they own it ſo to be; how can this be taken to be a Publication? and it will be a thing of wonderful Conſequence, if an Anſwer to a Queſtion put by Authority, ſhould amount to a Crime, as it would in this Caſe, that would be as if Authority that ſhould be employed to do Right, would be turned to do the greateſt Wrong; for it is the Duty of all men to anſwer when examined by a lawful Authority, and it would never be offered at ſure in any other Caſe: If a Man comes before a Magiſtrate, and confeſſes any thing, that indeed is Evidence, but is not a Crime; for there is a great deal of difference between Evidence and the Crime; but that this ſhould be both an Evidence and a Crime too, is, I think, a very ſtrange Conſtruction; and for the other part (the writing of it) I ſuppoſe the Court is ſatisfied that it was in another County.

Sir *Geo. Treby*. I deſire your Lordſhip to ſpare me a Word, which I think has not been obſerved by the Council that have ſpoke before. The Queſtion that remains, is, Whether my Lords the Biſhops did *Publiſh* this Paper? This is a matter of Fact that lies upon the Proſecutors to prove. Now I think they are ſo far from having proved that the Biſhops *did* publiſh it, that on the contrary, they have proved that their Lordſhips did *not* Publiſh it.

The

The Evidence they have offered for this matter is a Confeſſion. This Confeſſion is teſtified by Mr. *Blathwayt*, and he ſays the Biſhops were ask'd at the Council whether they did ſubſcribe and publiſh this paper, and that their anſwer was that they did *ſubſcribe* but not *publiſh* it.

Now a Confeſſion muſt be taken together, and muſt be admitted to be *intirely* true by them that produce it; they ſhall never be allowed to take out and uſe one *piece*, and wave the reſt.

Why then by this Evidence of Confeſſion, taken as it ought, it appears that the Biſhops (though they did ſubſcribe) did not *publiſh* the paper. So that, I ſay, the King's Counſel have hereby plainly proved that the Biſhops did *not* publiſh this paper, and yet this is the onely Evidence upon which they would infer that they *did* publiſh it.

Mr. Att. Gen. Look you, it does lie upon you Gentlemen to prove it was done elſewhere than in *Middleſex*.

Mr. *Finch*. Sure Mr. Attorney is in jeſt.

Mr. Att. Gen. No, I am in good earneſt, all the proof that we have given has been in *Middleſex*, and you can beſt tell whether you did it in *Middleſex* or no.

Mr. *Finch*. My Lord, we have done as to this Objection; for we ſay they have not proved their Caſe.

L. Ch. Juſt. Mr. *Finch* you may obſerve (and I am ſure you do obſerve as well as any body in all Caſes,) but I ſay you may obſerve that they are off of every thing but cauſing it to be publiſhed; now that does lie upon the King's Counſel to prove, that my Lords the Biſhops did cauſe it to be publiſhed, for their owning of their hands does not amount to a Publication.

Mr. S. Pemberton. My Lord, We are upon this point with them, whether here be any Evidence of a Publication at all.

Mr. Juſt. Powell. Pray let us clear this firſt; for if there be no publication, there can be no cauſing of it to be publiſhed.

Mr. *Att. Gen.* My Lord, if you think fit, we ſhall go on and reſerve this point till afterwards.

Mr. Sol. Gen. They may make Objections, if they think fit.

L. Ch. Juſt. So they may, and they ſay if theſe Objections are with us, we need go no farther.

Mr. S. Pemberton. But, my Lord, if they be not with us, we have a reſerve to give a farther Anſwer to it and to offer Evidence againſt the Evidence they have offered.

Mr. Sol. Gen. With all our hearts, give in Evidence what you can.

Mr. Att. Gen. Then pray my Lord let us go on to anſwer this Objection.

L. Ch. Juſt. Pray do Mr. Attorney.

Mr. Att. Gen. My Lord and Gentlemen of the Jury, I would firſt obſerve how far we have gone. That there was ſuch a paper written is clear beyond all queſtion, and written by my Lord Archbiſhop of *Canterbury*, and that it was ſigned by the reſt of the Biſhops, but not in the County of *Middleſex*, and that this paper was publiſhed is agreed on all hands.

Mr. Juſt. Holloway. No they do not agree that.

Mr. Att. Gen. Do I ſay it was publiſhed by them? but there was ſuch a paper publiſhed.

Mr. *S. Pemberton.* No, we ſay it was never publiſhed at all.

L. Ch. Juſt. Pray Brother *Pemberton* be quiet, if Mr. Attorney in opening does ſay any thing that he ought not to ſay, I will correct him, as I would do any body that does not open things right as they are proved, but pray don't you that are at the Bar interrupt one another, it is unbecoming men of your Profeſſion to be chopping in and ſnapping at one another——Go on Mr. Attorney.

Mr. Att. Gen. I ſay, that the Paper is proved to be written and ſigned by my Lords the Biſhops, that I take for granted, and that the Paper ſo ſigned and written is now publiſhed to the world, is alſo evident; but the queſtion is who it was done by, or who cauſed it to be done, we are reduced to that queſtion: Now, firſt, it is agreed on all hands, that if I ſend a Letter to a private Man containing Scandalous things in it, though there is no proof more, but that it was ſent ſealed and received by the party, in that Caſe it was a

fault puniſhable in the Star-Chamber, as a Crime; but now that this was received by the King, and written by them, there is no room for doubt; for you hear it was produced by the King at the Council-Board, and they asked upon it, if it were their hands? that the King did receive it, there is no room for queſtion, or that they did write it; but the queſtion is, from whom the King had it? I am ſure they muſt ſhew that ſome body elſe did it; and unleſs they doe ſhow that, I hope there is no manner of queſtion, but it came from them, and they did it; though no man Living knew any thing of this matter, but whom they thought fit to communicate it to; yet ſtill they putting the King upon the neceſſity of ſhewing this Power in order to his obtaining ſatisfaction for it, or elſe he muſt remain under the indignity without reparation, it ought to be put upon them to clear the Fact; for if he does not produce it, then muſt the King put up the higheſt injury and affront, that perhaps a Man can give the King to his face, by delivering a Libel into his own hands; and if he does produce it, then ſay they, that is not our publication, we prove it to be your writing and ſigning, and we prove it to come from the hand of the King againſt whom it was compoſed, for we ſay it is a Libel againſt his Majeſty, his Government and Prerogative; if then, all thoſe caſes that have been cited be Law, then ſure there never was a ſtronger caſe in the World than this; and I hope the Law goes a little farther in the caſe of the King, than it does in the caſe of a private Man; no Man muſt think by policy to give private wounds to the Government, and diſparage the Adminiſtration of it, and then when he is called in queſtion about it, ſays he, pray prove that I publiſhed it, or elſe you ſhall not puniſh me for it, we prove you framed it and writ it and ſigned it, and we prove it came to the King's hand, of whom it was compoſed, muſt we produce two Witneſſes of the delivery of it to the King? ſurely there will be no need of any thing of that.

Mr. Sol. Gen. My Lord, we have reduced it now to a very narrow queſtion, for (as Mr. *Attorney* has ſaid) my Lord, there is no doubt but that my Lords the Biſhops are the Authours of this Paper, there is no doubt but they ſigned it, and there is no doubt but that their ſigning of it, though it were at *Lambeth* (as they ſay) is a publiſhing of it, but however this is plain and manifeſt, that this Paper was publiſhed, and that this Paper was publiſhed in *Middleſex*, that is as plain too; now then there is nothing left but this queſtion, whether my Lords the Biſhops who framed the thing, who wrote the thing, who ſigned the thing, were not the occaſion or cauſe of its publication, or privy or conſenting to it; my Lord, I will reduce it to a very plain point; for we are upon a rational queſtion, before a rational Court, and a rational Jury, whether theſe Lords did all of them in the County of *Surry*, conſent to the publiſhing of this Paper in *Middleſex*; for it is publiſhed in *Middleſex*, (that we ſee,) and if they are guilty of that part of the Information, of cauſing it to be publiſhed, now what do they ſay to it, ſay they, it is agreed that it is publiſhed in *Middleſex*, but it is not proved to be publiſhed by us.

Lord Ch. Juſt. No, they do not ſay ſo, they agree it was in *Middleſex*, but not publiſhed.

Mr. *Juſt. Powel.* Mr. Solicitor, they do agree it was in *Middleſex*, but not publiſhed to be ſure, not by them.

Lord Ch. Juſt. Mr. Solicitor, I'll tell you what they ſtand upon, they ſay you ought to prove it to be delivered to the King by the Biſhops, or ſome body employed by them; for upon that went the Reſolution that was in *William's* caſe, that he ſent it to the King; but here is no body that proves that it was delivered to the King in this caſe, ſo that how it came to the King *Non conſtat.*

Mr. Sol. Gen. There will be the queſtion between us, whether this be not a publication.

Sir *Rob. Sawyer.* Pray Mr. Solicitor prove your caſe before you argue it.

Lord Ch. Juſt. Firſt ſettle what the caſe is, before it be either proved or argued.

Mr. Sol. Gen. My Lord, I'll put you the caſe, here does appear in *Middleſex* a Paper that is a Libel in it ſelf, and this Libel is proved to be written and formed by theſe perſons, this Libel coming into *Middleſex*, the queſtion is, whether they are privy to it, I ſay in point of preſumption, it muſt come from them.

Lord Ch. Juſt. I cannot ſuppoſe it, I cannot preſume any thing.

Mr. Sol. Gen.

Mr. Sol. Gen. My Lord, I ſpeak of that which is a common preſumption, a natural preſumption, what we commonly call a violent preſumption, which is a legal preſumption, and has always been allowed for Evidence; now whether there be not ſuch a preſumption in our Caſe, as to induce your Lordſhip and the Jury to believe that it cannot be otherwiſe, or at leaſt to put the labour upon them, to ſhew how it came out of their Studies, and how it came to the King's hands, for it is in their power to ſhew the truth of this matter, how it was, if they do not, the preſumption will lie upon them; that the Paper came to the King, that is plain enough, and its coming to the King's hands, is a plain proof of a publication in *Middleſex*, and who ſhould bring it to the King, but theſe Gentlemen in whoſe power it was? there is no Man undertakes to ſay, he loſt it, then what elſe is to be believed, but that it came from them, I ſpeak of common ſuppoſition and belief, they may very well ſhew it if it were not ſo; all that we can ſay in it, is, here is a Paper in *Middleſex*, this you agreed was once your Paper, and in your power, pray ſhew what became of it, it lies upon you to clear this doubt.

Mr. Recorder. My Lord, there is but this queſtion in the caſe, the queſtion is not, whether the owning it be a publication, but whether here be any Evidence that they did deliver it to the King; now if they did deliver it to the King, that will be agreed to me to be a publication.

Mr. *Juſ. Holloway.* No doubt of it, if you can prove it.

Mr. Recorder. Pray Sir ſpare me, that they did it you have this Evidence; firſt, that they were the Authours of this Paper by their own Confeſſion, that this was in the County of *Middleſex*, and that when they were asked concerning it, they owned it to be their hand Writing; now whether you can in the leaſt queſtion after all this, their delivering of it to the King, or that it came to the King's hands without their knowledge or conſent, is that which lies before your Lordſhip for your Judgment.

Lord Chief Juſtice. I will ask my Brothers their Opinion, but I muſt deal truly with you, I think it is not Evidence againſt my Lords the Biſhops.

Mr. *Juſt. Holloway.* Truly I think you have failed in your Information, you have not proved any thing againſt my Lords the Biſhops in the County of *Middleſex*, and therefore the Jury muſt find them not guilty.

Mr. Attor. Gen. I'le put you but one caſe my Lord, a Man has an opportunity ſecretly to deliver a Libel into the King's hands, when no Body is by, and ſo there can be no proof of the delivery.

Mr. *Juſt. Powel.* 'Tis a dangerous thing Mr. *Attorney* on the other ſide, to convict People of Crimes without proof.

Mr. Attorney General. But ſhall a Man be permitted thus to affront the King, and there be no way to puniſh it.

Lord Chief Juſtice. Yes, there will ſure, but it will be a very ſtrange thing if we ſhould go and preſume that theſe Lords did it, when there is no ſort of Evidence of it; 'tis that which I do aſſure you I cannot do, we muſt proceed according to Evidence and forms and methods of Law, they may think what they will of me, but I always declare my mind according to my Conſcience.

Mr. *S. Trinder.* But as to that other point whether their owning of it, be a publication, has not been particularly ſpoke to.

Lord Chief Juſtice. Mr. Attorney, and Mr. Solicitor, if there were enough to raiſe doubt in the Court, ſo as to leave it to the Jury, I would ſumm up the Evidence.

Mr. Solicit. Gen. My Lord, we know it is with the Court, theſe Lords inſiſted upon it, that it was a great while in their hands, but it ſeems as far as our Evidence has gone hitherto, their Confeſſion went no farther than that it was their Paper, and we muſt not extend their Confeſſion further than it was; but I think we ſhall offer a fair Evidence that they did deliver it in the County of *Middleſex*.

Lord Ch. Juſt. Indeed, indeed, you ought to have gone to this Mr. Solicitor, before the Court gave their Opinions.

Mr. Solicit. Gen. Pray call Mr. *Blathwayt* again.

Mr. *Blathwayt* called.

Lord Ch. Juſt. Mr. Solicitor, unleſs you are ſure that Mr. *Blathwait* is a Witneſs to the publication, 'tis but ſpending the Courts time to no purpoſe to call him.

Mr. Solicit. Gen. We are ſure of nothing, my Lord, but we muſt make uſe of our Witneſſes, according to our Inſtructions in our Briefs.

Then Mr. *Blathwait* appeared.

Mr. Attor. Gen. Mr. *Blathwait* you were ſworn before.

Mr. *Blathwait.* Yes, Sir.

Mr. Attor. Gen. Your were preſent when this Paper or Petition was deli vered by the King, at the Council-Board.

Mr. *Blathwait.* Yes, I was ſo Sir.

Mr. Attor. Gen. Do you remember any thing of the Biſhops acknowledging their delivery of it to the King.

Mr. Sol. Gen. Mr. *Blathwait* I would ask you, was there any mention or diſcourſe with my Lords the Biſhops, how that Paper came into the King's hands, was there any mention of what it was done for, upon the account of Religion or how?

Mr. Blathwait. I don't remember any thing of that Mr. Solicitor, *at which there was a great Laughter.*

Lord Ch. Juſt. Pray let us have no laughing, it is not decent, can't all this be done quietly without noiſe, pray Mr. *Blathwait* let me ask you, do you remember there was any diſcourſe how that writing came into the Kings hands?

Mr. Blathwait. I received it from the Kings hands, and I know it was preſented to him by my Lords the Biſhops.

Lord Ch. Juſt. How do you know it was preſented to the King.

Mr. Blathwait. I heard the King ſay ſo ſeveral times.

Mr. Sol. Gen. Pray mind my queſtion Sir, firſt I ask you who produced the Paper at the Council-Table?

Mr. Blathwait. The King.

Mr. Sol. Gen. What ſaid the Biſhops when that Paper was ſhewed them.

Mr. Blathwait. Then (as I remember) they were asked, whether that was the Paper that they delivered to the King?

Mr. Sol. Gen. Then what ſaid the Biſhops?

Mr. Blathwait. They at firſt ſcrupled to anſwer, and they ſaid it might be made uſe of to their prejudice if they owned it.

Mr. Att. Gen. Pray *Mr. Blathwait* conſider again, was that the queſtion put to my Lords the Biſhops, whether that was the Paper that was preſented by them to the King?

Mr. Blathwait. I do think, to the beſt of my remembrance, that my Lord Chancellor did ask them to that purpoſe, I cannot ſpeak to the very words.

Mr. Sol. Gen. And upon this, what anſwer did they make?

Mr. Blathwait. My Lords the Biſhops ſcrupled to anſwer the firſt and ſecond time (as I told you before) but they did own it was the Petition that they preſented to the King, to the beſt of my remembrance.

Mr. Sol. Gen. Did the Archbiſhop do any thing to own it?

Mr. *Blathwait.* Yes both my Lord Archbiſhop of *Canterbury* and the reſt of the Biſhops did own all the ſame thing.

Mr. Sol. Gen. Was this done at *Whitehall?*

Mr. *Blathwait.* Yes, at the Council-Table.

L. Ch. Juſt. Pray recollect your ſelf, and conſider what you ſay, did they own that that was the Paper they delivered to the King?

Mr. Serj. Pemb. Pray my Lord give us leave to ask a queſtion to clear this matter, was the queſtion put to them, Whether it was the Paper that they delivered, or whether it were their hands that were to it?

Mr. Blathwait. My Lord, I do not ſo exactly recollect the words.

L. Ch. Juſt. But pray tell us, if you can, what the queſtion was?

Mr. Blathwait. My Lord, I do not remember the very words, but I think if Mr. Serjeant *Pemberton* be pleaſed to repeat his queſtion, I ſhall give him a ſatisfactory anſwer, as well as I can.

Mr. Serj. Pemberton. Sir, that which I ask you is this, Whether the queſtion that was put to my Lords the Biſhops at that time was, Whether this was the Paper that they deliver'd to the King, or whether thoſe were their hands that was to it?

Mr. Blathwait. My Lord, I did always think that it was a plain Caſe that that was the Paper that they delivered to the King, and my Lords the Biſhops

did

did never deny but that they gave it to the King, and I had it from the King's hands.

L. Ch. Juſt. But we muſt know from you (if you can tell us) what the queſtion was that was put to my Lords the Biſhops, were they asked, Whether thoſe were their hands that were to that paper, or was it Whether they delivered that paper to the King?

Mr. Blathwait. As to the firſt part, that they owned 'twas their hands, that I am ſure of; but as to the other, I do not remember what the words were.

At which there was a great ſhout.

Mr. Att. Gen. Pray Mr. *Blathwait* recollect your ſelf, you ſay the King produced it.

Mr. *Blathwait.* Yes Sir.

Mr. Att. Gen. Do you remember that the King asked them any queſtion upon the producing of it?

Mr. Blathwait. My Lord Chancellor asked them, if thoſe were not their hands to the Petition?

Mr. Sol. Gen. Was there any other matter in diſcourſe, whether that was the paper that was delivered by them to the King?

Mr. Blathwait. I cannot ſo poſitively ſay, what were the words that my Lord Chancellor uſed.

Mr. S. Levinz. Pray do not twiſt a man ſo, Mr. Solicitor.

Mr. Sol. Gen. And you are not to untwiſt a man neither, Mr. Serjeant.

Mr. Att. Gen. Do you remember that the King ſaid any thing of the paper being delivered to him?

Mr. Blathwait. The King has ſaid it ſeveral times, I believe I have heard him ſay it ten times at leaſt.

Mr. Att. Gen. Did he ſay it at that time?

Mr. Blathwait. I cannot poſitively ſay that he did, Sir.

Mr. S. Pemb. He cannot anſwer it, why will you preſs it?

Mr. *Blathwait.* My Lord, here is the Clerk of the Counſel that was then in waiting, he took minutes, and perhaps can remember more than I.

Mr. Sol. Gen. Here they cry he cannot anſwer it, as if they could tell what he can anſwer better than himſelf; pray Mr. *Bridgman*, was there any queſtion to this purpoſe either from my Lord Chancellor, or from the King, whether that was the Paper that was preſented by my Lords the Biſhops, or delivered by the King, for I ſee you are very nice as to words, and you do very well; but was there not a queſtion to that purpoſe.

Mr. Bridgm. Sir, I do not remember, for I ſpeak to the beſt of my remembrance in all this matter; I ſay, I do not remember that that queſtion was asked in thoſe very words, but I do remember ſomething was ſaid to that purpoſe, but by whom I cannot particularly ſay.

Sir *Rob. Sawyer.* To what purpoſe?

Mr. Sol. Gen. It is very ſtrange that they wont let the witneſs ſpeak, but are continually interrupting him.

Sir *Rob. Sawyer.* Mr. Solicitor, no body interrupts him.

L. C. J. Why do not I behave my ſelf between you all as I ought to do? pray Sir *Rob. Sawyer*, ſit down, you cannot be contented when the man does you no harm.

Mr. *Sol. Gen.* Pray conſider, did my Lords the Biſhops ſay any thing, or was there any diſcourſe concerning the Paper, whether it was delivered to the King or no?

Mr. *Bridgm.* Mr. Solicitor, I have told you as near as I can what I do remember; I know not by whom it was ſaid, but that queſtion or to that purpoſe was asked, whether that was the Petition they delivered, but I do not remember whether the queſtion was directly asked or anſwered, there was ſomething about it, and ſeveral paſſages there were; but whether ſpoken by my Lord Chancellor or who, I cannot remember.

Mr. *Sol. Gen* You ſay there was that which ſufficiently denoted a queſtion to that purpoſe, and they ſaid nothing againſt it.

Mr. *Bridgm.* No, there was no denial of it.

Mr. S. *G.* I ſee you do not remember the particular words, nor do we deſire it of you.

Mr. *Bridgm.* They did not deny it nor confeſs it.

Mr. *Sol. Gen.* Then in your apprehenſion did they own that they delivered that Paper to the King?

L. C. J. You muſt not ask that Mr. Solicitor, it is not a fair queſtion to ask him what he apprehended.

Mr. *Sol. Gen.* He ſaid it before himſelf.

L. C. J. But his apprehenſions are no Evidence, and it is a ſort of a leading queſtion which we muſt not allow of.

Mr. Sol. Gen. Then if your Lordſhip do not like it, I will not ask it, but I will ask him another queſtion.

L. C. J. Ay, ten if you will, ſo they be fair ones.

Mr. Sol. Gen. Was it upon the firſt or ſecond time of their being examined?

Mr. Bridgm. I cannot tell, it was not the firſt time, all of it, I believe; for at the firſt time my Lords the Biſhops made ſome ſcruple of anſwering or owning any thing, and whatſoever they owned, they ſaid, they hoped it ſhould not be made uſe of to their prejudice; I remember no reply that was made, nor any thing farther, onely my Lord Chancellor ſaid, they were not to capitulate with their Prince; but they were required to anſwer the queſtions that were asked them.

Mr. Sol. Gen. What were thoſe queſtions?

Mr. Bridgm. I have told you already as well as I can remember.

Mr. Sol. Gen. But did you take it upon the main that they owned the delivery of that paper to the King?

Mr. Juſt. Pow. Mr. Solicitor, you have been told you are to ask no ſuch queſtions.

S. R. Saw. Nor never was there ſuch wire-drawing of a Witneſs in this world before.

L. Ch. Juſt. Pray ſit ſtill, Sir *Rob. Sawyer*, you are not to teach us what we are to do, Mr. Solicitor muſt ask queſtions that are proper for him and not ſuch as theſe; but the Court muſt correct him and not you.

Mr. Sol. Gen. Mr. *Bridgman* is very cautious, and he is to be commended for it, but we would get the truth out of him, if we could, pray Sir, if you can remember, recollect your ſelf, whether by any queſtion to that purpoſe, it was believed that they did own the delivery of the paper to the King.

Mr. Bridgm. I told you, Mr. Solicitor, as to that at firſt, that I do not remember the very words of the queſtion, but I believe there was no body doubted that that was not the paper.

Mr. Sol. Gen. You ſpeak well in your way, but theſe Gentlemen are very unwilling you ſhould tell your opinion.

L. Ch. Juſt. His opinion is no Evidence, therefore you muſt not ask any ſuch queſtions, Mr. Solicitor.

Mr. Bridgm. Aſſoon as the *Petition* was delivered, within a few hours after, I ſaw it, the King ſhewed it to ſeveral people, and he ſaid, it was the *Petition* the Biſhops had delivered, he took it into his own cuſtody, and afterwards commanded me to write a Copy of it, and there was no Copy made of it but that one, but notwithſtanding that, I do remember I did ſee a Copy of the *Petition*, within a day or two after it was preſented about the Town.

Mr. Sol. Gen. Pray how many days was this before the diſcourſe in Counſel upon their Examination?

Mr. Bridgm. How many days was what Sir?

Mr. Sol. Gen. When the King gave the paper to be copied.

Mr. Bridgm. It was upon the *Sunday*.

Mr. Sol. Gen. But you ſay (as you believe) it was in a few hours after the paper was delivered to the King, that you did ſee it.

Mr. Juſt. Powel. But what makes him ſay that this was delivered to the King, but only hear-ſay?

Lord Ch. Juſt. Pray Mr. Solicitor, will you produce that which is Evidence, and not ſpend our time in that which is not.

Mr. Sol. Gen. My Lord, I would make no more of it than it is.

Mr. S. Levinz. 'Tis a ſhamefull thing to offer ſuch things in a Court of Juſtice.

Mr. S. Pemberton. 'Tis a practice that ought not to be endured.

Lord Ch. Juſt. Pray Brothers be quiet, or i'le turn him looſe upon you again, if you'l not be quiet; what is the matter? cannot you let us alone? we ſhall do every body right: come, to ſhorten this matter, I ask you but this one queſtion, and that may ſatisfie any one that has honeſty about him; do you remember whether or no they were asked, if that was the Petition that they delivered to the King?

Mr. Bridgm. My Lord, I have anſwered that queſtion as directly as I can, I do not poſitively remember that that was the queſtion.

Lord Ch. Juſt. Mr. Solicitor General, you muſt be ſatisfied, when proper queſtions are fairly anſwered, and therefore pray be quiet.

Mr. Att. Gen. However we pray we may ask the reſt of the Clerks of the Counſel,

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it may be they may remember more—Sir *John Nicholas* you were at the Council-Table that day my Lords the Biſhops were examined about this Paper.

Sir *John Nicholas*. Yes, Sir, I was.

Mr. Att. Gen. Pray did you obſerve that the King produced the Petition?

Sir *John Nicholas*. No, indeed, I did not ſee it.

Mr. Att. Gen. Did you obſerve any thing that paſſed there in diſcourſe?

Mr. Sol. Gen. Did you obſerve any queſtions that were asked the Biſhops, either by the King or by my Lord Chancellor?

Sir *John Nich.* I think my Lord Chancellor did ask them, if that was their hands to the Petition, and they owned it.

Mr. Sol. Gen. Do you remember whether they owned, that they delivered that Paper to the King?

Lord Ch. Juſt. I'le ask you, Sir *John Nicholas*, did my Lord Chancellor ask them this queſtion, is this the Petition you delivered to the King?

Sir *John Nicholas*. I do not remember that.

Then there was a great ſhout.

Mr. Sol. Gen. Here's wonderfull great rejoycing that truth cannot prevail.

Mr. *S. Pemberton*. No, Mr. Solicitor, truth does prevail.

Mr. Sol. Gen. You are all very glad that truth is ſtifled, Mr. Serjeant.

Mr. *S. Trinder*. Pray Sir *John Nicholas*, let me ask you one queſtion, was there any diſcourſe about delivering that Petition to the King?

Sir *John Nicholas*. Indeed I do not remember it.

Mr. Sol. Gen. There is Mr. *Pepy's*, wee'll examine him.

Mr. *Pepy's* ſworn.

Lord Ch. Juſt. Come i'le ask the queſtions, were you bye at the Council-Board when my Lords the Biſhops were committed?

Mr. *Pepy's*. Yes, I was.

Lord Ch. Juſt. What were the queſtions that were asked either by the King or by my Lord Chancellor?

Mr. *Pepy's*. My Lord, I would remember as well as I could, the very words, and the very words of the queſtion were (I think) My Lords, do you own this Paper? I do not remember any thing was ſpoken about the delivering, but I believe it was underſtood by every body at the Table, that that was the Paper that they had delivered.

Lord Ch. Juſt. Well have you done now? But to ſatisfie you i'le ask this queſtion, was this queſtion asked, my Lords was this the Paper you delivered to the King?

Mr. *Pepy's*. No, my Lord.

Mr. Att. Gen. Pray Sir, do you remember whether the King himſelf asked the queſtion?

Mr. *Pepy's*. You mean I ſuppoſe Mr. Attorney that theſe were the words, or ſomething that imported their delivering it to the King.

Mr. Att. Gen. Yes, Sir.

Mr. *Pepy's*. Truly I remember nothing of that.

Mr. Sol. Gen. Did you obſerve any diſcourſe concerning their delivery of it to the King.

Mr. *Pepy's*. Indeed Mr. Solicitor I do not.

Mr. *Att. Gen.* Swear Mr. *Muſgrave*.

Mr. *Muſgrave* Sworn.

Lord Ch. Juſt. You hear the queſtion Sir, what ſay you to it?

Mr. *Muſg.* My Lord I will give as ſhort an acount of it as I can, the firſt time after his Majeſty had produced the Petition and it was read at the Board, his Grace my Lord Arch Biſhop of *Canterbury* and the other ſix Reverend Lords Biſhops were called in, and it were asked of them, if they owned that, or if it was their hands, my Lord Archbiſhop in the name of the reſt, did decline anſwering, upon the account that they were there as Criminals, and were not obliged to ſay any thing to their own prejudice, or that might hurt them hereafter; but if his Majeſty would command them, and if he would promiſe that no advantage ſhould be made of whatſoever they confeſſed, then they would anſwer the queſtion, his Majeſty made no anſwer to that, but only ſaid he would do nothing but what was according to Law, whereupon the Biſhops were ordered to withdraw, and being called in a ſecond time the Petition was ſhewn to them, and they were asked if they did own it, or if it was their hands, and I think my Lord Archbiſhop did ſay then, we will rely upon your Majeſty, or ſome

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ſuch general thing was ſaid, and then they did all own it that it was their hands, I cannot ſay the Petition was read to them.

Mr. *Juſt. Pow.* Mr. *Blathwait* (as I remember) it was the third time.

Mr. *Muſgrave.* It was the ſecond time (to the beſt of my remembrance)

Lord Ch. Juſt. Pray Sir, was there any queſtion to this purpoſe? is this the Paper you delivered to the King?

Mr. *Muſg.* I do not remember that ever any ſuch direct queſtion was asked.

Mr. *Juſt. Allybone.* But (as my Brother *Pemberton* did very well before diſtinguiſh) there is a great deal of difference between the owning the ſubſcription of a Paper, and between the owning of that Paper, Mr. *Pepy's* did ſay that they did own the Paper, and upon my word that will look very like a Publication.

Mr. *Muſg.* I remember my Lord, there was at the ſame time a queſtion asked, becauſe ſeveral Copies had gone about the Town, whether they had publiſhed it, and my Lord Archbiſhop did ſay, he had been ſo cautious that he had not admitted his own Secretary, but writ it all himſelf, and the reſt of the Biſhops did ſay, they did not publiſh it, nor never gave any Copies of it.

Mr. *Att. Gen.* My Lord (I confeſs) now it is to be left to the Jury upon this point, whether there not being a poſitive Witneſs that was by when the thing was done, yet upon this Evidence the Jury can't find any otherwiſe, than that the thing was done; truly I think we muſt leave it as a ſtrong caſe for the King, I could have wiſhed indeed for the ſatisfaction of every body, that the proof would have come up to that, but we muſt make it as ſtrong for the King upon the Evidence given as it will bear; now my Lord, take all this whole matter together, here is a Paper compoſed, framed, and written by ſeven learned Men, and this muſt be written by ſuch perſons, ſure for ſome purpoſe; it is directed as a Petition to the King, and this Petition did come to the hands of the King, (for the King produces it in Counſel,) and my Lord Archbiſhop and the reſt of the Biſhops owned their hands to it, then the queſtion is, my Lord, whether or no there be any room for any body living to doubt in this caſe that this was not delivered by my Lords the Biſhops to the King, though it be not a concluſive Evidence of a poſitive Fact, yet unleſs they ſhew ſomething on the other ſide, that may give way for a ſuppoſition to the contrary, that it came out of their hands by ſurprize, or that any body elſe delivered it to the King without their knowledge or conſent; here muſt needs be a very violent preſumption, that they did do it; and when nothing of that is ſaid on their ſide, can any Jury upon their Conſciences ſay that it was not publiſhed by them? and it being found in *Middleſex*, though it might be written and compoſed in *Surry*, yet ſurely we have given a convincing Evidence that either they publiſhed it or cauſed it to be publiſhed in *Middleſex*.

Pray call Mr. *Grayham.*

Cryer. He is gone out of the Hall.

Mr. Sol. Gen. My Lord, there is in Law a preſumption that is Evidence, though there be no poſitive proof.

Sir *Rob. Sawyer.* But not in an Information for a Libel.

Mr. *Sol. Gen.* This is a meer queſtion of Fact, there is no difficulty in the Law of it at all, for it is plain, if theſe Lords or any of them did conſent and agree to the publiſhing of this Paper in *Middleſex*, they are guilty of this Information, and whether they are guilty or not guilty, we do rely upon the Circumſtances proved, which are very violent; Firſt, that they were the Men that contrived and ſet their hands to it, and ſo were the Authours of it is undenyable; for they have owned it. Men of their learning and parts never did any ſuch thing in vain; and then that they were concerned in the publiſhing of it in *Middleſex*, we offer for proof that which was ſaid by Mr. *Pepy's* and Mr. *Blathwait*, who though they do not come directly and expreſly to the formal words of ſuch a queſtion, yet they tell you, eſpecially Mr. *Blathwait*, that they did apprehend it, and it was the Collection of all their thoughts, and they took it for granted, as a thing that every body was ſatisfied in, that they did deliver that Paper to the King. I muſt confeſs and agree there is no proof of the delivery of it by my Lords the Biſhops to the King, but we know very well, that it is no wonder, when a Paper is Libellous, that Men ſhould uſe all the skill they can to publiſh it with impunity, and this is a thing that was done after ſome time of premeditation and ſerious Conſultation; for it was ſome days after the Order for reading the Declaration was publiſhed, that this was framed and delivered, and it concerned them to be

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wary, (as it ſeems they have been); but take this altogether, my Lord, the Paper being found in the King's Hands, it is in theſe Perſons Power, and it lies upon them to make it out plain, what became of this Paper, which once lay in their own Hands and Cuſtody; they can give an Account of it, they can give Light unto it: If they do not, I ſhall ſubmit to the Jury, whether this is not ſufficient Evidence to Convict them, eſpecially when being examined, they did not make that their Excuſe, they never ſaid, this Paper indeed we ſigned, but we did not intend to publiſh it, we intended to ſtifle it; that had been ſome excuſe: But for them to ſay now, they did not preſent it to the King, I muſt ſubmit to the Jury, whether they will believe upon this Evidence, that theſe Lords the Biſhops did preſent it, or cauſe it to be preſented to the King, then they are guilty of this Matter: And I leave it to them and their Conſciences, what they will think upon the whole.

Mr. Recorder. My Lord, if your Lordſhip pleaſe——

Lord Chief Juſtice. What, again? Well, go on Sir *Bartho. Shore*, if we muſt have a Speech——

Mr. Recorder. Nay, my Lord, I would not treſpaſs upon your Lordſhip.

L. C. Juſt. Gentlemen of the Jury, here is an Information againſt my Lords the Biſhops; I think I need not trouble my ſelf to open all of it, becauſe I ſee you are Men of Underſtanding, Men of great Diligence, and have taken Notes your ſelves ſome of you; therefore, I ſay, only ſomething of the Proof that is required in ſuch a Caſe, and of the manner of the Proof that has been given in this Caſe, and then tell you my Opinion in Point of Law. Here is an Information brought by Mr. Attorny General on behalf of the King, againſt theſe Reverend Fathers of the Church, the Arch-Biſhop and the reſt; and it is for publiſhing a Seditious Libel, under the pretence of a Petition, in which are contained the words that are ſeen. Gentlemen, the Information is long, it tells you, That the King, out of his Gracious Clemency to all his Loving Subjects, and for other Conſiderations, had thought fit to publiſh a Declaration of Indulgence, that all his Loving Subjects might have Liberty of Conſcience, upon the 4*th* of *April*, in the 3*d* Year of his Reign; and that this was ſet forth by the King; and that the King of his farther Grace, about the 27*th* of *April* then next following——

Mr. Finch. I humbly beg your Lordſhips Favour.

L. C. Juſt. What ſay you, Mr. *Finch?*

Mr. Finch. I ask your Pardon for breaking in upon you when you are directing the Jury: I know I ſhould not do it, but I hope you will not be angry with me for it?

L. C. Juſt. If I thought you did any Service to your Client, I ſhould willingly hearken to you.

Mr. Finch. That which I humbly offer to your Lordſhip, is only to remember your Lordſhip where we were.

L. C. Juſt. Go on, Sir.

Mr. Finch. I would only ſay this, my Lord, the Queſtion is, Whether this be Evidence, or no?

L. C. Juſt. I am ſorry, Mr. *Finch*, you have that Opinion of me, as to think I ſhould not leave it fairly to the Jury.

Mr. Finch. I only ſpeak it, my Lord, becauſe if it be Evidence, we have other Matter to offer in Anſwer to that Evidence, and in our own Defence.

L. C. Juſt. If you have more to offer, why did you conclude here, and let me begin to direct the Jury? but ſince you ſay you have other Matter to offer, we will hear it.

Mr. S. Pemberton. My Lord, we ſubmit to your Lordſhips direction.

L. C. Juſt. No, no, you do not, you ſay you have further Matter to offer.

Mr. Pollixfen. My Lord, we ſhall reſt it here.

L. C. Juſt. No, no, I will hear Mr. *Finch*; Go on, my Lords the Biſhops ſhall not ſay of me, that I would not hear their Counſel; I have already been told of being Counſel againſt them, and they ſhall never ſay that I would not hear their Counſel for them.

Mr. S. Levinz. My Lord, we beſeech your Lordſhip go on with your Directions; for all that Mr. *Finch* ſaid, was only that this was not ſufficient Evidence.

L. C. Juſt. No, Brother, he ſays you have a great deal more to offer, and I will not refuſe to hear him; the Court will think there was ſomething more than ordinary, therefore I will hear him, ſuch a Learned Man as he ſhall not be refuſed to be heard by me, I'le aſſure you; Why don't you go on Mr. *Finch?*

Mr. Finch. My Lord, I beg your pardon for interrupting you; but all that I was going to ſay, would have amounted to no more than this, That there being no Evidence againſt us, we muſt of courſe be acquitted.

Mr. Juſt. *Holloway.* My Lord did intend to have ſaid as much as that, I dare ſay.

L. C. Juſt. Well, Gentlemen of the Jury, we have had Interruption enough——

Mr. Soll. Gen. My Lord, I muſt beg your Pardon for interrupting you now; and I am very glad theſe Gentlemen have given us this Occaſion, becauſe we ſhall now be able to clear this Point. There is a Fatality in ſome Cauſes, my Lord, and ſo there is in this, we muſt beg your Patience for a very little while, for we have notice that a Perſon of very great Quality is coming, that will make it appear, that they made their Addreſſes to him, that they might deliver it to the King.

L. C. Juſt. Well——You ſee what comes of the Interruption, Gentlemen, now we muſt ſtay——

——*Then there was a Pauſe for near half an hour.*

Mr. Att. Gen. Pray, my Lord, put the Caſe that a Man writes a Libel in one County, and it is found in another, Is not he anſwerable, unleſs he can ſhew ſomething that may ſatisfy the Jury how it came there?

Mr. Soll. Gen. Ought he not to give an account what became of it?

L. C. Juſt. No: look you Mr. Attorney, you muſt look to your Information, and then you will find the Caſe that you put, does not come up to it; It is for Writing, Compoſing, and Publiſhing, and cauſing to be publiſhed, and all this is laid in *Middleſex*; Now you have proved none of all theſe things to be done in the County.

Mr. Att. Gen. They did in *Middleſex* confeſs it was theirs.

L. C. Juſt. Ay, but the owning their Hands is not a publication in *Middleſex*, and ſo I ſhould have told the Jury.

Mr. Finch. I beg your Lordſhip's pardon for interrupting you.

Mr. Att. Gen. But, my Lord, does it not put the Proof upon them, to prove how it came out of their Hands into the King's Hands.

L. C. Juſt. No, the Proof lies on your part.

Mr. Pollixfen. Pray, my Lord, give us your favour to diſmiſs us and the Jury.

Mr. Soll. Gen. My Lord, our Witneſſes will be here preſently.

Mr. Att. Gen. Sure, my Lord, the Preſumption is on our ſide.

Mr. Juſt. Powell. No, the Preſumption is againſt you, for my Lord Arch-Biſhop lived in *Surry*; and it is proved was not out of *Lambeth-Houſe* ſince *Michaelmaſs*, till he came before the Council.

Mr. S. Pemb. Pray, good my Lord, we ſtand mightily uneaſy here, and ſo do the Jury, pray diſmiſs us.

L. C. Juſt. I cannot help it, it is your own Fault.

——*Then there was another great Pauſe.*

Lord Chief Juſtice. Sir *Bartho. Shore*, now we have time to hear your Speech, if you will.

Mr. Pollixfen. My Lord, there is no Body come, nor I believe will come.

Mr. Soll. Gen. Yes, he will come preſently, we have had a Meſſenger from him.

[Call Mr. *Graham.*]

Cryer. He is gone, and ſaid he would come preſently.

Mr. Sol. Gen. My Lord, he will bring our Witneſſes with him.

——*Then there was another Pauſe.*

Mr.

Mr. *S. Pemb.* My Lord, this is very unuſual to ſtay thus for Evidence.

L. Ch. Juſt. It is ſo; but I am ſure you ought not to have any Favour.——— Mr. *Solicitor*, Are you aſſured that you ſhall have this Witneſs that you ſpeak of?

Mr. *Soll. Gen.* Yes, my Lord, he will be here preſently.

L. Ch. Juſt. We have ſtaid a great while already, and therefore it is fit that we ſhould have ſome Oath made that he is coming.

Mr. *Sol. Gen.* The Cryer tells you, that Mr. *Graham* did acquaint him, that he would return preſently.

L. Ch. Juſt. Give him the Book.

Mr. *Soll. Gen.* Let your Left-hand give your Right-hand the Oath.

The Cryer ſworn.

L. Ch. Juſt. By the Oath that you have taken, did Mr. *Graham* tell you, there was any further Witneſs coming in this Caſe?

Cryer. Yes, my Lord, he did; he went out of the Hall, and returned when your Lorſhip was directing the Jury, and he asked me what the Court were upon? and I told him you were directing the Jury, and then he ſaid my Lord *Sunderland* was a coming, but he would go and prevent him; and afterwards he returned and finding your Lordſhip did not go on to direct the Jury, he ſaid he would go again for my Lord *Sunderland*, whom he had ſent away, and he is now gone for him, and he ſaid he would bring him with him preſently.

L. Ch. Juſt. Well then, we muſt ſtay till the Evidence for the King comes, for now there is Oath made that he is coming.

——— *And after a conſiderable pauſe the Lord Preſident came.*

Mr. *Attor. Gen.* My Lord, we muſt pray that my Lord Preſident may be ſworn in this Caſe, on behalf of the King.

The Lord Preſident ſworn.

Mr. *Attor. Gen.* My Lord, with your Lordſhip's favour, I would ask my Lord Preſident a Queſtion; Your Lordſhip remembers where we left this Cauſe; we have brought it to this Point, That this Petition came to the King's Hands, that it is a Petition written by my Lord Arch-biſhop, and ſubſcribed by the reſt of my Lords the Biſhops, but there is a Difficulty made, whether this Petition thus prepared and written was by them delivered to the King, and whether my Lords the Biſhops were concerned in the doing of it, and were privy or Parties to the Delivery: Now that which I would ask your Lordſhip my Lord Preſident, is, Whether they did make their Application to your Lordſhip to ſpeak to the King.

Mr. *Soll. Gen.* Did they make their Application to your Lordſhip upon any account whatſoever?

L. Preſident. My Lord, my Lord Biſhop of St. *Aſaph*, and my Lord Biſhop of *Chicheſter* came to my Office, and told me, they came in the Names of my Lord Arch-biſhop of *Canterbury*, and four others of their Brethren and themſelves, with a Petition which they deſired to deliver to his Majeſty, and they did come to me to know which was the beſt way of doing it, and whether the King would give them leave to do it or not? they would have had me read their Petition, but I refuſed it, and ſaid, I thought it did not at all belong to me, but I would let the King know their deſire, and bring them an Anſwer immediately, what his pleaſure was in it; which I did, I acquainted the King, and he commanded me to let my Lords the Biſhops know, they might come when they pleaſed, and I went back and told them ſo, upon which they went and fetch'd the reſt of the Biſhops, and when they came, immediately they went into the Bed-Chamber, and into another Room where the King was: this is that I know of the matter.

Mr. *Soll. Gen.* About what time was this, pray, my Lord?

L. Preſident. I believe there could not be much time between my coming from the King, and their fetching their Brethren, and going in to the King.

Mr. *Soll. Gen.* They were with the King that day.

L. Preſident. Yes, they were.

Mr. *Soll. Gen.* Was this before they appeared in Council?

L. Preſident. Yes, it was ſeveral days before.

Mr. *Soll. Gen.* Then I think now, my Lord, the matter is very plain.

Mr. *Juſt. Allibone.* Did they acquaint your Lordſhip that their buſineſs was to deliver a Petition to the King.

L. Preſident. Yes, they did.

Mr. *Soll. Gen.* And they would have had my Lord read it (he ſays.)

Mr. *Attorn. Gen.* And this was the ſame day that they did go in to the King.

L. Preſident. The very ſame day, and I think the ſame hour, for it could not be much longer,

L. Ch. Juſt. Now it is upon you truly, it will be preſumed to be the ſame, unleſs that you prove that you delivered another ——— Pray, my Lord, did you look into the Petition?

L. Preſident. No, I refuſed it, I thought it did not concern me.

Mr. *Juſt. Powel.* Did you ſee them deliver it to the King, my Lord?

L. Preſident. I was not in the Room when it was delivered.

Mr. *Juſt. Powel.* They did open their Petition to your Lordſhip, did they?

L. Preſident. They offered me to read it, but I did refuſe.

L. Ch. Juſt. Will you ask my Lord Preſident any Queſtion, you that are for the Defendants?

Sir *Rob. Sawyer.* No, my Lord.

Mr. *Sol. Gen.* Then my Lord, we muſt beg one thing for the ſake of the Jury, if your Lordſhip can turn your ſelf a little this way, and deliver the Evidence you have given over again that they may hear it.

L. Preſident. My Lord, I will repeat it as near as I can, I think I ſhall not vary the Senſe: The Biſhops of St. *Aſaph* and *Chicheſter* came to my Office, I do not know juſt the day when, but it was to let me know, that they came in the Name of the Arch-biſhop and four other of their Brethren——— Is it neceſſary I ſhould name them?

L. Ch. Juſt. Do it, my Lord, if you can.

L. Preſident. They were the Biſhops of *Ely*, *Bath* and *Wells*, *Briſtol*, and *Peterborough*; they came to let me know, in the Name of the Arch-biſhop, thoſe four and themſelves, that they had a Petition to deliver to the King, if he would give them leave; and deſired to know of me which was the beſt way to do it. I told them I would know the King's Pleaſure, and bring them word again: they offered me their Petition to read, but I did not think it fit for me to do it, and therefore I refuſed and would not read it, but I went immediately to the King, and acquainted his Majeſty with it, and he commanded me to let them know they might come when they would, which I immediately did, they ſaid they would go and ſpeak with ſome of their Brethren that were not far off; in the mean time I gave order that they ſhould be admitted when they came, and they did in a little time return, and went firſt into the Bed-Chamber, and then into the Room where the King was.

Mr. *Sol. Gen.* And this was before they came and appeared at the Council.

L. Preſident. Yes it was.

Mr. *Pollixfen.* Your Lordſhip did not read any thing of the Petition.

L. Preſident. No, Sir, I did not, I refuſed it.

Mr. *Pollixfen.* Nor does your Lordſhip know what Petition they did deliver to the King.

L. Preſident. I did not know any thing of it from them then.

L. Ch. Juſt. Now you may make your Obſervations upon this two hours hence; now we ſhall hear what Mr. *Finch* had further to offer, I ſuppoſe.

Then my Lord Preſident went away.

Mr. *Sol. Gen.* I think now it is very plain.

L. Ch. Juſt. Truly, I muſt needs tell you, there was a great preſumption before, but there is a greater now, and I think I ſhall leave it with ſome effect to the Jury, I cannot ſee but that here is enough to put the Proof upon you: they came to the Lord Preſident, and asked him how they might deliver a Petition to the King, he told them he would go and ſee what the King ſaid to it; they would have had him read their Petition, but he refuſed it; he comes and tells them the King ſaid they might come when they would; then thoſe two that came to my Lord Preſident went and gathered up the other four (the Arch-biſhop indeed was not there) but they ſix came, and my Lord Preſident gave Direction they ſhould be let in, and they did go into the Room where the King was; now this, with the King's producing the Paper, and their owning it at the Council, is ſuch a Proof to me, as I think will be Evidence to the Jury of the Publication.

Mr. *Pollixfen.* Then my Lord thus far they only can go, the Arch-biſhop was not there, and ſo there is no Evidence againſt him.

Mr. *Sol. Gen.* As to the Writing, we have given Proof againſt him, for it is all his Hand.

Mr.

Mr. *Pollixfen.* That ſtill is in another County, and there is nothing proved to be done by my Lord Arch-Biſhop in *Middleſex*; and next, for the other ſix Lords, my Lord Preſident does not ſay that this is the Petition that they ſaid they had to deliver to the King; nor did he ſee them deliver any thing to the King, but that is left ſtill doubtful, and under your Judgment, ſo that it ſtands upon Preſumption, not upon Proof, that this is the ſame and left under Conſideration.

Mr. *Attor. Gen.* Then we will leave it fairly to the Jury upon this Fact.

Mr. *Pollixfen.* If ſo, then we deſire to be heard in our Defence.

Sir *Rob. Sawyer.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, you have heard this Charge which Mr. *Attorny* has been pleaſed to make againſt my Lords the Biſhops, and that is this, That they did conſpire to diminiſh the Royal Authority, and Regal Prerogative, Power, and Government of the King, and to avoid the Order of Council, and in proſecution of this, they did falſely, maliciouſly and ſeditiouſly make a Libel againſt the King, under pretence of a Petition, and did publiſh the ſame in the King's preſence.

This, Gentlemen, is a very heinous and heavy Charge; but you ſee how ſhort their Evidence is; The Evidence they bring forth is only, that my Lords the Biſhops preſented the Paper to the King in the moſt private and humble manner they could, that which they have been ſo many hours a proving, and which they cry up to be as ſtrong an Evidence as ever was given, proves it to be the fartheſt from Sedition in the doing of it that can be; and you ſee what it is, it is a Petition to be relieved againſt an Order of Council, which they conceive they were aggrieved by, they indeed do not deal fairly with the Court nor with us, in that they do not ſet it forth that it was a Petition.

L. Ch. Juſt. That was over-ruled before.

Sir *Rob. Sawyer.* I do not inſiſt upon it now, ſo much an Exception to the Information, as I do to the Evidence; they ſet this forth to be a ſcandalous matter; but it only contains their Reaſons, whereby they would ſatisfy his Majeſty why they cannot comply in a Concurrence with his Majeſty's Pleaſure; and therefore they humbly beſeech the King, and beg and requeſt him (as the words of it are) that his Majeſty would be pleaſed not to inſiſt upon their diſtributing and reading of this Declaration; ſo the Petitioners on behalf of themſelves, and the whole Clergy of *England*, beg of the King that he would pleaſe not to inſiſt upon it.

Gentlemen, you may obſerve it, that there is nothing in this Petition that contains any thing of Sedition in it, and it would be ſtrange this Petition ſhould be *Felo de ſe*, and by one part of it deſtroy the other, it is laid indeed in the Information, that it was with intent and purpoſe to diminiſh the King's Royal Authority, but I appeal to your Lordſhip, the Court, and the Jury, whether there be any one word in it, that any way touches the King's Prerogative, or any tittle of Evidence that has been given to make good the Charge; It is an Excuſe barely for their non-Complyance with the King's Order, and a begging of the King with all Humility and Submiſſion, that he would be pleaſed not to inſiſt upon the reading of his Majeſty's Declaration upon theſe grounds, becauſe the Diſpenſing Power upon which it was founded, had been ſeveral times in Parliament declared to be againſt Law, and becauſe it was a Caſe of that Conſequence that they could not in Prudence, Honour or Conſcience concur in it.

My Lord; Mr. *Attourny* has been pleaſed to charge in this Information, that this is a falſe, malicious and ſeditious Libel: both the falſity of it, and that it was malicious and ſeditious, are all Matters of Fact, which with Submiſſion they have offered to the Jury no proof of, and I make no queſtion but eaſily to demonſtrate the quite contrary.

For, my Lord, I think it can be no queſtion, but that any Subject that is Commanded by the King to do a Thing which he conceives to be againſt Law, and againſt his Conſcience, may humbly apply himſelf to the King, and tell him the Reaſon why he does

not that thing he is commanded to do, why he cannot concur with his Majeſty in ſuch a Command.

My Lord, that which Mr. *Attorney* did inſiſt upon in the beginning of this Day (and he pretended to cite ſome Caſes for it) was, that in this Caſe, my Lords the Biſhops, were not ſued as Biſhops, nor proſecuted for their Religion: truly, My Lord, I do not know what they are ſued for elſe; the Information is againſt them as Biſhops, it is for an Act they did as Biſhops, and no otherwiſe; and for an Act they did and do conceive they lawfully might do with relation to their Eccleſiaſtical Polity, and the Government of their People as Biſhops.

The next thing that Mr. *Attorney* offered was, that it was not for a Non-feaſance, but for a Feaſance; it is true, my Lord, it is for a Feaſance in making of the Petition, but it was to excuſe a Non-feaſance, the not reading according to the Order, and this ſure was lawful for all the Biſhops as Subjects to do; and I ſhall ſhew it was certainly the duty of my Lords the Biſhops, or any Peer of the Realm to do the ſame in a like Caſe. It was likewiſe ſaid, they were proſecuted here for affronting the Government, and intermedling with Matters of State; but I beg your Lordſhip and the Jury to conſider, whether there is one tittle of this mentioned in the Petition, or any Evidence given of it; the Petition does not meddle with any thing of any Matter of State, but refers to an Eccleſiaſtical Matter, to be executed by the Clergy, and to a Matter that has relation to Eccleſiaſtical Cauſes; ſo that they were not Buſybodies, or ſuch as meddled in Matters that did not relate to them, but that which was properly within their Sphere and Juriſdiction.

But after all, there is no Evidence, nor any ſort of Evidence that is given by Mr. *Attorney*, that will maintain the leaſt tittle of this Charge; and how he comes to leave it upon this ſort of Evidence I cannot tell, all that it amounts to is, That my Lords the Biſhops being greived in this manner, made this Petition to the King in the moſt private and reſpectful manner; and for him to load it with ſuch horrid black Epithets, that it was done Libellouſly, Maliciouſly, and Scandalouſly, and to oppoſe the King and Government, 'tis very hard, 'tis a Caſe of a very extraordinary Nature, and I believe my Lords the Biſhops cannot but conceive a great deal of trouble, that they ſhould lie under ſo heavy a Charge, and that Mr. *Attorney* ſhould draw ſo ſevere an Information againſt them, when he has ſo little Proof to make it out.

My Lord, by what we have to ſay to it, we hope we ſhall give your Lordſhip and the Jury Satisfaction, that we have done but our Duties, ſuppoſing here has been a ſufficient Evidence of the Fact given, which we leave to your Lordſhip and the Jury.

My Lord, we ſay in ſhort, That this Petition is no more than what any Man if he be Commanded to do any thing, might humbly do it, and not be guilty of any Crime: And, my Lord, as to the Matter of our Defence, it will conſiſt of theſe Heads;

Firſt, We ſhall Conſider the Matter of this Petition.

Secondly, The Manner of the delivering it, according as they have given Evidence here; and,

Thirdly, the Perſons that have delivered this Petition. And we hope to make it appear, beyond all queſtion, that the Matter contained in this Petition, is neither falſe, nor contrary to Law, but agreeable to all the Laws of the Land in all Times. We ſhall likewiſe ſhew you (though that appear ſufficiently to you already) that the Manner of delivering it was ſo far from being Seditious, that it was in the moſt ſecret and private manner, and with the greateſt Humility and Duty imaginable. And then as to the Perſons, we ſhall ſhew you that they are not ſuch as Mr. *Attorney* ſays, who meddle with Matters of State, that are out of their Sphere, but they are Perſons concerned, and concerned in Intereſt in the Caſe, to make this humble application to the King. And when we have proved all this Matter, you will ſee how ſtrangely we are blackned with Titles and Epithets which we no ways deſerve, and of which, God be thanked, there is no Proof.

For my Lord, for the Matter of the Petition, we ſhall conſider two things.

The

The First is, The Prayer, which is this, They humbly beg and desire of the King, on behalf of themselves and the rest of the Clergy, that he would not insist upon the Reading and Publishing of this Declaration.

Surely, my Lord, there is nothing of Falsity in this, nor any thing that is contrary to Law, or unlawful for any Man that is pressed to any thing, especially, by an Order of Council; and this is nothing but a Petition against an Order of Council, and if there be an Order that commands my Lords the Bishops, to do a thing that seems grievous to them, surely they may beg of the King that he would not insist upon it.

And for this Matter, they were so well satisfied about it, and so far from thinking that it was any part of a Libel, that they left it out of the Information, and so have made a deformed and absurd Story of it, without Head or Tail, a Petition directed to no Body, and for nothing, it being without both Title and Prayer; so that this is plain, is was lawful to Petition.

Then, my Lord, the next Thing is, the Reasons which my Lords the Bishops come to acquaint the King with, why, in Honour and Conscience, they cannot comply with, and give obedience to this Order; and the Reasons, my Lord, are two.

The first Reason that is assigned, is, the several Declarations that have been in Parliament, (several of which are mentioned) that such a Power to dispense with the Law, is against Law; and that it could not be done but by an Act of Parliament, for that is the meaning of the word *Illegal*, that has no other signification, but unlawful; the same word in point of signification with the word *Illicitè*, which they have used in their Information, a thing that cannot be done by Law; and this they are pleased to tell the King, not as declaring their own Judgments, but what has been declared in Parliament; though if they had done the former, they being Peers of the Realm, and Bishops of the Church, are bound to understand the Laws, especially when (as I shall come to show you) they are made Guardians of these Laws; and if any thing go amiss, and contrary to these Laws, they ought to inform the King of it.

My Lord, the next thing is, Because it is a Thing of so great moment, and the Consequences that will arise from their publishing of this Declaration, and that too, my Lord, (for the latter I shall begin first with) there can be no Question about, or any pretence that this is libellous or false, for certainly it is a Case of the greatest Consequence to the whole Nation that ever was, therefore it cannot be false or libellous to say so.

My Lord, I would not mention this, for I am loth to touch upon things of this Nature, had not the Information it self made it the very *Gist* of the Charge; for the Information (if there be any thing in it) says, that it was to diminish the King's Prerogative and Regal Power in publishing that Declaration.

Now, my Lord, what the Consequence of this would be, and what my Lords the Bishops meant by saying, It was a Cause of great Moment, will appear, by considering that which is the main Clause in the Declaration, at which my Lords the Bishops scrupled, which is the main Stumbling-block to my Lords, and has been to many honest Men besides, and that is this.

"We do likewise declare, It is our Royal Will and Pleasure, that from hence-forth "the Execution of all and all manner of Penal Laws, in Matters Ecclesiastical, for not "coming to Church, or not receiving the Sacrament, or for any other Nonconformity to "the Religion Established; or for or by Reason of the Exercise of Religion in any man-"ner whatsoever, be immediately suspended; and the further execution of the said Pe-"nal Laws, and every of them, is hereby suspended.

Now, my Lord, this Clause either is of some legal Effect and Signification, or it is not. If Mr. *Attorny*, or the King's Council, do say it is of no Effect in Law, then there is no harm done, then this Petition does no ways impeach the King's Prerogative, in saying, it has been declared in Parliament, according as the King's Counsel do agree the Law to be.

But, my Lord, if it have any Effect in Law, and these Laws are suspended by virtue of this Clause in the Declaration, then

Here the Lord Chief Justice speaking aside said.

L. C. Just. *I must not suffer this, they intend to dispute the King's Power of suspending Laws.*

Mr. Juſt. *Powel. My Lord, they muſt neceſſarily fall upon that Point; for if the King hath no ſuch Power, (as clearly he hath not in my Judgment) the natural Conſequence will be, that this Petition is no diminution of the King's Regal Power, and ſo not ſeditious or libellous.*

L. C. Juſt. *Brother, I know you are full of that Doctrine; but however, my Lords the Biſhops ſhall have no occaſion to ſay, that I deny to hear their Counſel. Brother, you ſhall have your Will for once, I will hear them, let them talk till they are weary.*

Mr. Juſt. *Powel. I deſire no greater liberty to be granted them than what in Juſtice the Court ought to grant, that is, to hear them in defence of their Clients.*

then certainly, my Lord, it is of the moſt diſmal Conſequence that can be thought of, and it behoved my Lords, who are the Fathers of the Church, humbly to repreſent it to the King.

For, my Lord, by this Declaration, and particularly by that Clauſe in it, not only the Laws of our Reformation, but all the Laws for the preſervation of the Chriſtian Religion in general are ſuſpended, and become of no force; if there be ſuch an Effect in Law wrought by this Declaration as is pretended, (that is) that the Obligation of Obedience to them ceaſeth, the Reaſon of it is plain, the words cannot admit of ſuch a Quibble as to pretend, that the Execution of the Law is not the Suſpending of the Law, and that the Suſpending the Execution of the Law, is not a Suſpending of the Law; for we all know the Execution of every Law, in its primary Intent, is Obedience to it, that of the Penalty comes in by way of Puniſhment and Recompence for their Diſobedience.

Now, my Lord, if this Declaration does diſcharge the King's Subjects from their Obedience to, and the Obligation from, thoſe Laws: then pray, my Lord, where are we? Then all the Laws of the Reformation are ſuſpended, and the Laws of Chriſtianity it ſelf, by thoſe latter words, [or for, or by reaſon of Religion in any manner whatſoever] ſo that it is not confined to the Chriſtian Religion, but all other Religions are permitted under this Clauſe; And thus all our Laws for keeping the Sabbath, and which diſtinguiſh us from Heathens, will be ſuſpended too.

My Lord, this is ſuch an Inconvenience as (I think) I need name no more; and it is a very natural Conſequence from that Clauſe of the Declaration, it diſcharges at once all Miniſters and Clergy-men from performing their Duty in reading the Service of the Church, it diſcharges their Hearers from attending upon that Service.

When a Law is ſuſpended, the Obligation thereof is taken away; and thoſe that before thought themſelves bound to obey, now conclude they are not ſo obliged; and what a miſchief that will be to the Church, which is under the Care of my Lords the Biſhops, your Lordſhip will eaſily apprehend.

Theſe things, my Lord, I only mention, to ſhew the great and evil Conſequences that apparently follow upon ſuch a Declaration, which made my Lords the Biſhops decline obeying the Order, and put them under a neceſſity of applying thus to the King, to acquaint him with the Reaſons why they could not comply with his Commands, to read this Declaration to the People, becauſe the Conſequences thereof were ſo great, it tending naturally to lead the People into ſo great an Error, as to believe thoſe Laws were not in Force, when in Truth and Reality they are ſtill in Force, and continue to oblige them.

And that being the ſecond Reaſon in this Petition, I come next to conſider it, to wit, that the Parliament had often declared this pretended Power to be Illegal, and for that we ſhall read the ſeveral Records in Parliament mentioned in their Petition, and produce ſeveral Ancient Records of former Parliaments that prove this Point; and particularly in the Time of *Richard* the Second, concerning the Statute of *Proviſors*, where there were particular Diſpenſations for that Statute, the King was enabled to do it by Act of Parliament, and could not do it without.

L. C. Juſt. Pray, Sir *Robert Sawyer*, go to your Proofs, and reſerve your Arguments till afterwards.

Sir *Rob. Sawyer.* My Lord, I do but ſhortly mention theſe things; ſo that, my Lord, as to the Matter of this Petition, we ſhall ſhew you, that it is true and agreeable to the Laws of the Land.

Then, my Lord, as to the manner of delivering it, I need ſay no more, but that it is plain from their Evidence, that it was in the moſt private and humble manner. And, as my Lord Preſident ſaid, Leave was asked of the King, for them to be admitted to preſent it: Leave was given, and accordingly they did it

We come then, my Lord, to the third thing, the Perſons, theſe noble Lords; and we ſhall ſhew, they are not Buſie-Bodies, but in this Matter have done their Duty, and medled with their own Affairs. That, my Lord, will appear,

Firſt, By the general Care that is repoſed in them by the Law of the Land: They are frequently in our Books, called the King's Spiritual Judges; they are intruſted with the Care of Souls, and the Superintendency over all the Clergy is their principal Care.

But, beſides this, my Lord, there is another ſpecial Care put upon them, by the expreſs Words of an Act of Parliament; for, over and above the general Care of the Church, by virtue of their Offices as Biſhops, the Act of 1 *Eliz. cap.* 2. makes them ſpecial Guardians of the Law of Uniformity, and of that other Law in His Late Majeſty's Reign; where all the Clauſes of that Statute of 1 *Eliz.* are revived, and made applicable to the preſent State of the Church of *England.* Now in that Statute of 1 *Eliz.* there is this Clauſe.

And for the due Execution hereof, the Queen's Moſt Excellent Majeſty, the Lords Spiritual and Temporal, and all the Commons in this preſent Parliament aſſembled, do, in God's Name, earneſtly require and charge all the Archbiſhops, and Biſhops, and other Ordinaries, that they do endeavour themſelves, to the utmoſt of their Knowledges, that the due and true Execution hereof may be had throughout their Dioceſſes and Charges, as they will anſwer before God, for ſuch Evils and Plagues, wherewith Almighty God may juſtly puniſh his People, for neglecting this good and wholſome Law.

This is the Charge that lies upon the Biſhops, to take care of the Execution of that Law; and I ſhall pray by and by, that it may be read to the Jury.

Mr. *Soll. Gen.* That is very well, indeed! To what purpoſe?

Sir *Rob. Sawyer*, So that, my Lord, by this Law it is plain, that my Lords the Biſhops, upon pain of bringing upon themſelves the Imprecation of this Act of Parliament, are obliged to ſee it executed; and then, my Lord, when any thing comes under their Knowledge, eſpecially if they are to be Actors in it, that has ſuch a tendency to deſtroy the very Foundations of the Church, as the Suſpenſion of all the Laws that relate to the Church muſt do, it concerns them that have no other Remedy, to addreſs the King, by Petition, about it.

For that, Mr. Attorney, my Lord, has agreed, That if a proper Remedy be purſued in a proper Court, for a Grievance complained of, though there may be many hard Words that elſe would be ſcandalous, yet, being in a regular Courſe, they are no Scandal. And ſo it is ſaid in *Lake*'s Caſe, in my Lord *Hobbart.*

My Lord, we muſt appeal to the King, or we can appeal to no body, to be relieved againſt an Order of Council, with which we are aggrieved; and it is our Duty ſo to do, according to the Care that the Law hath placed in us.

Beſides, my Lord, the Biſhops were commanded by this Order, to do an Act relating to their Eccleſiaſtical Function, to diſtribute it to be read by their Clergy: And how could they in Conſcience do it, when they thought part of the Declaration was not according to Law?

Pray, my Lord, What has been the reaſon of His Majeſty's conſulting of his Judges? And if His Majeſty, or any the great Officers, by his Command, are about to do any thing that is contrary to Law, was it ever yet an Offence to tell the King ſo? I always look'd upon it as the Duty of an Officer or Magiſtrate, to tell the King what is Law, and what is not Law.

In *Cavendiſh*'s Caſe, in the Queen's time, there was an Office granted of the Return of the Writs of *Superſedeas* in the Court of *Common Pleas*; and he comes to the Court, and deſires to be put into the poſſeſſion of the Office: The Court told him, They could do nothing in it, but he muſt bring his Aſſize. He applies to the Queen, and ſhe ſends, under the Privy Seal, a Command to ſequeſter the Profits, and to take Security to anſwer the Profits, as the Judgment of the Law ſhould go:

But the Judges there return an Anſwer, That it was againſt Law, and they could not do it. Then there comes a ſecond Letter, reciting the former, and commanding their Obedience: The Judges returned for Anſwer, They were upon their Oaths, and were ſworn to keep the Laws, and would not do it.

My Lord, The like was done in the time of my Lord *Hobbart*: We have it reported in *Anderſon*, in a Caſe where a Prohibition had gone; There came a Meſſage from Court, that a Conſultation ſhould be granted; and that was a Matter wherein there were various Opinions, whether it was *Ex Neceſſitate*, or Diſcretionary, but there they return'd, That it was againſt Law, for any ſuch Meſſage to be ſent.

Now here, my Lord, is a Caſe full as ſtrong: My Lords the Biſhops were commanded to do an Act, which they conceived to be againſt Law, and they decline it, and tell the King the reaſon; and they have done it in the moſt humble manner that could be, by way of Petition. If they had done (as the Civil Law terms it) *Reſcribere* generally, that had been lawful; but here they have done it in a more reſpectful manner, by an humble Petition. If they had ſaid the Law was otherwiſe, that ſure had been no Fault; but they do not ſo much as that, but they only ſay, it was ſo declared in Parliament; and they declare it with all Humility and Dutifulneſs. So that, my Lord, if we conſider the Perſons of the Defendants, they have not acted as Buſie-Bodies; and therefore, as this Caſe is, when we have given our Evidence, here will be an Anſwer to all the Implications of Law, that are contained in this Information: For they would have this Petition work by Implication of Law, to make a Libel of it; but by what I have ſaid, it will appear, there was nothing of Sedition, nothing of Malice, nothing of Scandal in it; nothing of the Salt, and Vinegar, and Pepper, that they have put into the Caſe. We ſhall prove the Matters that I have open'd for our Defence, and then, I dare ſay, your Lordſhip and the Jury will be of Opinion, we have done nothing but our Duty.

Mr. *Finch*, May it pleaſe your Lordſhip, and you, Gentlemen of the Jury, This Information ſets forth (as you may obſerve upon opening it) that the King having, by his Royal Prerogative, ſet forth his Declarations that have been read, and made an Order of Council for the Reading the ſaid Declarations in the Churches; and that the Archbiſhop and Biſhops ſhould ſeverally ſend them into their Dioceſſes, to be read; my Lords the Biſhops, that are the Defendants, did conſult and conſpire together to diminiſh the Kingly Authority, and Royal Prerogative of the King, and his Power and Government in his Regal Prerogative, in ſetting forth his Declaration; and that, in proſecution of that Conſpiracy, they did contrive (as it was laid in the Information) a malicious, ſeditious, ſcandalous, falſe, and feigned Libel, under pretence of a Petition, and ſo ſet forth the Petition; and that they publiſhed the Petition in the preſence of the King.

To this Charge in the Information, *Not Guilty* being pleaded, the Evidence that hath been given for the King, I know hath been obſerved by the Court and the Jury, and I know will be taken into Conſideration, how far it does come up to the Proof of the Delivery of this Petition by my Lords the Biſhops; for all that was ſaid till my Lord Preſident was pleas'd to come, was no Evidence of any Delivery at all; and my Lord Preſident's Evidence is, that they were going to deliver a Petition; but whether they did deliver it, or did it not, or what they did deliver, he does not know. This is all the Evidence that has been given for the King.

But ſuppoſing now, my Lord, that there were room to preſume that they had delivered this Petition ſet forth in the Information, let us conſider what the Queſtion is between the King and my Lords the Biſhops: The Queſtion is, Whether they are guilty of Contriving to diminiſh the King's Regal Authority, and Royal Prerogative, in his Power and Government, in ſetting forth this Declaration? Whether they are guilty of the making and preſenting a malicious, ſeditious and ſcandalous Libel; and whether they have publiſhed it, as it is ſaid in the Information, in the King's Preſence?

So that the Queſtion is not now reduced to this, Whether this Paper, that is ſet forth in the Information, was delivered to the King by my Lords the Biſhops; but whether they have made a malicious, ſeditious and ſcandalous Libel, with an Intent to diminiſh the King's Royal Prerogative, and Kingly Authority? And then, if you, Gentlemen, ſhould think that there is Evidence given, ſufficient to

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prove that my Lords the Biſhops have delivered to the King that Paper which is ſet forth in the Information; yet, unleſs they have delivered a falſe, malicious, ſeditious and ſcandalous Libel; unleſs they have publiſhed it, to ſtir up Sedition in the Kingdom; and unleſs they have contrived this by Conſpiracy, to diminiſh the King's Royal Prerogative and Authority, and that Power that is ſaid to be in the King, my Lords the Biſhops are not guilty of this Accuſation.

There are in this Declaration ſeveral Clauſes, which, upon reading of the Information (I am ſure) cannot but have been obſerved by you, Gentlemen of the Jury; and one ſpecial Clauſe hath been by the Council already opened to you, and I ſhall not enlarge upon it.

My Lord, This Petition that is thus delivered to the King, if it be a Libel, a ſcandalous and ſeditious Libel (as the Information calls it) it muſt be ſo, either for the Matter of the Petition, or for the Perſons that deliver'd the Petition, or for the manner of their preſenting and delivering it: But neither for the Matter, nor for the Perſons, nor for the manner of preſenting it, is there any Endeavour to diminiſh the King's Royal Prerogative, nor to ſtir up Sedition, nor Reflection upon the King's true Royal and Kingly Authority.

The Petition does humbly ſet forth to His Majeſty, that there having been ſuch a Declaration, and ſuch an Order of Council, they did humbly repreſent to His Majeſty, that they were not averſe to any thing commanded them in that Order, in reſpect to the juſt and due Obedience that they owed to the King, nor in reſpect of their want of a due Tenderneſs to thoſe Perſons to whom the King had been pleaſed to ſhew his Tenderneſs; but the Declaration being founded upon a Power of Diſpenſing, which had been declared illegal in Parliament ſeveral times, and particularly in the Years 1662, 72, and 85. they did humbly beſeech His Majeſty (they not being able to comply with his Command in that matter) that he would not inſiſt upon it.

Now, my Lord, Where is the Contrivance to diminiſh the King's Regal Authority, and Royal Prerogative?

This is a Declaration founded upon a Power of Diſpenſing, which undertakes to ſuſpend all Laws Eccleſiaſtical whatſoever; for not Coming to Church, or not Receiving the Sacrament, or any other Nonconformity to the Religion eſtabliſhed, or for or by reaſon of the Exerciſe of Religion in any manner whatſoever; Ordering that the Execution of all thoſe Laws be immediately ſuſpended, and they are thereby declared to be ſuſpended; as if the King had a Power to ſuſpend at once all the Laws relating to the eſtabliſh'd Religion, and all the Laws that were made for the Security of our Reformation. Theſe are all ſuſpended by His Majeſty's Declaration (as it is ſaid) in the Information, by virtue of his Royal Prerogative, and Power ſo to do.

Now, my Lord, I have always taken it, with Submiſſion, that a Power to abrogate Laws, is as much a part of the Legiſlature, as a Power to make Laws: A Power to lay Laws aſleep, and to ſuſpend Laws, is equal to a Power of Abrogating them; for they are no longer in Being, as Laws, while they are ſo laid aſleep, or ſuſpended: And to abrogate all at once, or to do it time after time, is the ſame thing; and both are equally parts of the Legiſlature.

My Lord, In all the Education that I have had, in all the ſmall Knowledge of the Laws that I could attain to, I could never yet hear of, or learn, that the Conſtitution of this Government in *England* was otherwiſe than thus, That the whole Legiſlative Power is in the King, Lords and Commons; the King, and his two Houſes of Parliament. But then, If this Declaration be founded upon a part of the Legiſlature, which muſt be by all Men acknowledged, not to reſide in the King alone, but in the King, Lords and Commons, it cannot be a legal and true Power, or Prerogative.

This, my Lord, has been attempted, but in the laſt King's time; it never was pretended till then; and in that firſt Attempt, it was ſo far from being acknowledged, that it was taken notice of in Parliament, and declared againſt: So it was in the Years 1662. and 1672.

In the Year —62. where there was but the leaſt Umbrage given of ſuch a Diſpenſing Power; although the King had declared, in his Speech to the Parliament, that he wiſhed he had ſuch a Power, which his Declaration before ſeemed to aſſume; the Parliament was ſo jealous of this, that they immediately made their Application to His Majeſty, by an Addreſs againſt the Declaration; and they give

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Reaſons againſt it, in their Addreſs: One, in particular, was, *That the King could not diſpenſe with thoſe Laws, without an Act of Parliament.*

There was another Attempt in 1672. and then, after His Majeſty had, in his Speech, mentioned his Declaration to them, the Parliament there again, particularly the Houſe of Commons, did humbly addreſs to His Majeſty; ſetting forth, that this could not be done by Law, without an Act of Parliament: And your Lordſhip, by and by, upon reading the Record, will be ſatisfied what was the Event of all this. His Majeſty himſelf was ſo far pleaſed to concurr with them in that Opinion, that he cancell'd his Declaration, tore off the Seal, and cauſed it to be made known to the Houſe of Lords, by the Lord Chancellor, who, by His Majeſty's Command, ſatisfied the Houſe of it, that His Majeſty had broken the Seal, and cancell'd the Declaration; with this further Declaration, which is enter'd in the Records of the Houſe, *That it ſhould never be drawn into Example, or Conſequence.*

My Lord, The Matter ſtanding thus, in reſpect to the King's Prerogative, and the Declarations that had been made in Parliament; conſider next. I beſeech you, how far my Lords the Biſhops were concerned in this Queſtion, humbly to make their Application to the King.

My Lords the Biſhops lying under a Command to publiſh this Declaration, it was their Duty, as Peers of the Realm, and Biſhops of the Church of *England*, humbly to apply themſelves to His Majeſty, to make known their Reaſons, why they could not obey that Command; and they do it with all Submiſſion, and all Humility, repreſenting to His Majeſty what had been declared in Parliament; and it having been ſo declared, they could not comply with his Order; as apprehending that this Declaration, was founded upon that which the Parliament declared to be illegal; and ſo His Majeſty's Command to publiſh this Declaration, would not warrant them ſo to do. This they did, as Peers; and this they had a Right to do as Biſhops; humbly to adviſe the King.

For, ſuppoſe, my Lord, (which is not to be ſuppoſed in every Caſe, nor do I ſuppoſe it in this; but ſuppoſe that there might be a King of *England* that ſhould be miſ-led; (I do not ſuppoſe that to be the Caſe now, I ſay, but I know it hath been the Caſe formerly) that the King ſhould be environed with Counſellors that had given him evil Advice; it has been objected as a Crime againſt ſuch evil Counſellors, that they would not permit and ſuffer the Great Men of the Kingdom to offer the King their Advice How often do we ſay in *Weſtminſter-Hall*, That the King is deceived in his Grant? There is ſcarce a Day in the Term, but it is ſaid in one Court, or other; but it was never yet thought an Offence to ſay ſo: And what more is there in this Caſe?

My Lord, If the King was miſ-informed, or under a Miſ-apprehenſion of the Law, my Lords, as they are Peers, and as they are Biſhops, are concerned in it; and if they humbly apply themſelves to the King, and offer him their Advice, where is the Crime?

My Lord, Theſe noble Lords, the Defendants, had more than an ordinary Call to this; for, beſides the Duty of their Office, and the Care of the Church, that was incumbent on them as Biſhops, they were here to become Actors; for they were, by that Order of Council, commanded themſelves to publiſh it, and to diſtribute it to the ſeveral Miniſters in their ſeveral Dioceſſes, with their Commands to read it: Therefore they had more than ordinary Reaſon to concern themſelves in the Matter.

Next, We are to conſider, my Lord, in what manner this was done; They make their Application to the King, by an humble Petition, with all the Decency and Reſpect that could be ſhewn; asking leave, firſt, to approach his Perſon; and having leave, they offer'd my Lord Preſident the Matter of their Petition, that nothing might ſeem hard, or diſreſpectful, or as if they intended any thing that was unfit to be avowed. When they had taken all this Care in their Approach, and begging leave for it, they come ſecretly to the King, in private, when he was all alone, and there they humbly preſent this Petition to His Majeſty. Now, how this can be called the Publication of a malicious and ſeditious Libel, when it was but the Preſenting of a Petition to the King alone: And how it can be ſaid to be with an Intent to ſtir up Sedition in the People againſt His Majeſty, and to alienate the Hearts of his People from him, when it was in this private manner delivered to him himſelf only, truly, I cannot apprehend.

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My Lord, I hope nothing of this can be thought an Offence: If the Jury ſhould think that there has been Evidence ſufficient given, to prove that my Lords the Biſhops did deliver this Paper to the King, yet that is not enough to make them guilty of this Information, unleſs this Paper be likewiſe found to be in Diminution of the King's Royal Prerogative, and Regal Authority, in diſpenſing with, and ſuſpending of all Laws, without Act of Parliament: Unleſs it be found to be a Libel againſt the King, to tell him, That in Parliament it was ſo and ſo declared: And unleſs the preſenting this by way of Petition (which is the Right of all People that apprehend themſelves aggrieved, to approach His Majeſty by Petition) be a Libelling of the King: And unleſs this humble Petition, in this manner preſented to the King in private, may be ſaid to be a malicious and ſeditious Libel, with an Intent to ſtir up the People to Sedition: Unleſs all this can be found, there is no Man living can ever find my Lords the Biſhops guilty upon this Information. Therefore, my Lord, we will go on, and make out this Matter that we have opened to your Lordſhip, if Mr. *Attorney*, and Mr. *Sollicitor* think fit to argue the Points that we have opened.

Mr. *Pollixfen*. Pray, my Lord, ſpare me a Word on the ſame Side. For the firſt Point, It is a Point of Law, whether the Matter contained in this Petition be a Libel. The King's Council pretend it is ſo, becauſe it ſays, the Declaration is founded upon a Power the Parliament has declared to be illegal. But we ſay, that whatſoever the King is pleaſed to ſay in any Declaration of his, it is not the King's ſaying of it, that makes it to be Law. Now we ſay, This Declaration under the Great Seal, is not agreeable to the Laws of the Land; and that for this Reaſon, Becauſe it does, at one Blow, ſet aſide all the Law we have in *England*.

My Lord, If this be denied, we muſt a little debate this matter; for they are almoſt all Penal Laws; not only thoſe before the Reformation, but ſince; upon which the whole Government, both in Church and State, does in a great meaſure depend.

Eſpecially, my Lord, in Matters of Religion, they are all Penal Laws: For, by the Act of Uniformity, which my Lords the Biſhops are ſworn to obſerve, and adjured by an expreſs Clauſe in the Act; No Man is to preach, unleſs he be Epiſcopally ordained; no Man is to preach without a Licence. If all this be ſet aſide, I confeſs, then it will go very far into the whole Eccleſiaſtical Government. If this be denied, we are ready to argue that too.

L. C. J. They are to do ſo ſtill.

Mr. *Pollixfen*. My Lord, I am ſure the Conſequence is otherwiſe, if this Declaration ſignifie any thing. And if it be the Will of the King, my Lord, the Will of the King is, what the Law is. If ſo be the King's Will be not conſonant to the Law, it is not obliging.

My Lord, The Caſes that we have had of Diſpenſations, are all ſo many ſtrong Authorities, againſt a general, or particular Abrogation. My Lord, that is a Matter of Law, which if it fall out to be any way doubtful, it will be fit to have it debated and ſetled.

If they will ſay, that the Penal Laws in Matters Eccleſiaſtical can be abrogated, or nulled, or made void *pro tempore*, or for Life, without the meeting of the King and People in Parliament; I muſt confeſs, they ſay a great thing, as it is a Point of great Concern; but I think, that will not be ſaid: And all that has been ever ſaid in any Caſe, touching Diſpenſations, proves quite the contrary, and aſſerts what I affirm. For, Why ſhould any Man go about to argue, that the King may diſpenſe with this or that particular Law, if at once he can diſpenſe with all the Law, by an undoubted Prerogative? This is a Point of Law, which we inſiſt upon, and are ready to argue with them; but we will go on with the reſt of thoſe things that we have offer'd: And firſt, we will read the Act of Uniformity, made 1 *Eliz.* that Clauſe of it, where they are ſo ſtrictly charged to ſee to the Execution of that Law.

This Act, my Lord, by the Act of Uniformity, made in the Beginning of the late King's Reign, is revived, with all the Clauſes in it, relating to this Matter. If then this be a Duty incumbent upon them, and their Oaths require it of them; and if they find, that the Pleaſure of the King, in his Declaration, is, that which is not conſonant to this Law, what can they do?

Can any thing be more humble, or done with a more Chriſtian Mind, than by way of Petition, to inform the King in the Matter? For I never thought it, nor hath it ever (ſure) been thought by any body elſe, to be a Crime to petition the King: For the King may be miſtaken in the Law, ſo our Books ſay; and we, every Day, in *Weſtminſter-Hall*, argue againſt the King's Grants, and ſay, He is deceived in his Grants. It is the great Benefit and Liberty, which the King gives to his Subjects, to argue the Legality, or Illegality of his Grants.

My Lord, When all this is done, to make this to be a Libel, by putting in the Words, Malicious, Seditious, Scandalous, and with an Intent to raiſe Sedition, would be pretty hard.——— My Lord, We pray, that Clauſe of the Statute may be read.

Mr. *Soll. Gen.* What for?

Mr. *Pollixfen.* It is a general Law, and therefore the Court will take notice of it; and we pray, the Jury may hear it read.

Mr. *Soll. Gen.* I agree it to be as Mr. *Pollixfen* has opened; and I agree it to be as Sir *Robert Sawyer* has opened it.

Mr. *S. Pemberton.* My Lord, We ſhall put it upon a ſhort Point: My Lords the Biſhops are here accuſed of a Crime, of a very heinous nature as can be; they are here branded and ſtigmatized by this Information, as if they were ſeditious Libellers; when, my Lord, it will, in truth, fall out, that they have done no more than their Duty; their Duty to God, their Duty to the King, and their Duty to the Church.

For, in this Caſe, that which we humbly offer to your Lordſhip (and inſiſt upon it, as very plain) is this; That the Kings of *England* have no power to ſuſpend, or diſpenſe with the Laws and Statutes of the Kingdom, that eſtabliſh our Religion. That is it, which we ſtand upon for our Defence. And we ſay, That ſuch a Diſpenſing Power with Laws and Statutes, is a thing that ſtrikes at the very Foundation of all the Rights, Liberties and Properties of the King's Subjects whatſoever. If the King may ſuſpend the Laws of the Land, which concern our Religion, I am ſure there is no other Law, but he may ſuſpend: And if the King may ſuſpend all the Laws of the Kingdom, what a Condition are all the Subjects in, for their Lives, Liberties and Properties? All at Mercy.

My Lord, The King's Legal Prerogatives are as much for the Advantage of his Subjects, as of himſelf; and no Man goes about to ſpeak againſt them: But, under pretence of Legal Prerogatives, to extend the Power of the King, to ſupport a Prerogative that tends to the Deſtruction of all his Subjects, their Religion, and Liberties; in that, I think, they do the King no Serviee, who go about to do it.

But now we ſay, with your Lordſhip's Favour, that theſe Laws are the great Bulwark of the Reformed Religion; they are, in truth, that which fenceth the Religion and Church of *England*, and we have no other Humane Fence beſides. They were made upon a Fore-ſight of the Miſchief that had, and might come, by falſe Religions in this Kingdom; and they were intended to defend the Nation againſt them, and to keep them out; particularly, to keep out the *Romiſh* Religion (which is the very worſt of all Religions) from prevailing among us; and that is the very Deſign of the Act for the Teſts, which is intituled, *An Act to prevent Dangers that may happen from Popiſh Recuſants.*

My Lord, If this Declaration ſhould take effect, what would be the End of it? All Religions are let in, let them be what they will; *Ranters*, *Quakers*, and the like; nay, even the *Roman Catholick* Religion (as they call it;) which was intended, by theſe Acts of Parliament, and by the Act of Uniformity, and ſeveral other Acts, to be kept out of this Nation, as a Religion no way tolerable, nor to be endured here.

If this Declaration take effect, that Religion will ſtand upon the ſame Terms with the Proteſtant Religion. Suſpend thoſe Laws, and that *Romiſh* Religion, that was intended to be prohibited, and ſo much Care was taken, and ſo many Statutes made, to prohibit it, will come in; and all this Care, and all thoſe Statutes go for nothing. This one Declaration ſets them all out of doors; and then that Religion ſtands upon equal Terms with the eſtabliſhed Religion.

My Lord, We ſay this farther, that my Lords the Biſhops have the Care of the Church, by their very Function, and Offices; and are bound to take care, to keep out all thoſe falſe Religions that are prohibited, and deſigned to be kept out by the Law.

Law. My Lords the Biſhops finding this Declaration founded upon a meer pretended Power, that had been continually oppoſed, and rejected in Parliament, could not comply with the King's Command to read it.

My Lord, Such a Power to diſpenſe with, or ſuſpend the Laws of a Nation, cannot, with any ſhadow of Reaſon, be. It is not long ſince, that ſuch a Power was ever pretended to by any, but ſuch as have the Legiſlative too; for it is plain, that ſuch a Power muſt, at leaſt, be equal to the Power that made the Laws. To diſpenſe with a Law, muſt argue a Power greater, or, at leaſt, as great as that which made the Law.

My Lord, It has been often ſaid in our Books, That where the King's Subjects are concerned in Intereſt, the King cannot ſuſpend, or diſpenſe with a particular Law. But, my Lord, how can the King's Subjects be more concern'd in Intereſt, than when their Religion lies at ſtake? It has been reſolved, upon the Statute of *Symony*, that where the Statute has diſabled the Party to take, there the King could not enable him, againſt that Act of Parliament: And ſhall it be ſaid, that by his Diſpenſation, he ſhall enable one to hold an Office, who is diſabled by the Teſt-Act?

My Lord, We ſay, The Courſe of our Law allows no ſuch Diſpenſation, as this Declaration pretends to. And he that is but meanly read in our Law, muſt needs underſtand this, That the Kings of *England* cannot ſuſpend our Laws; for that would be, to ſet aſide the Law of the Kingdom: And then we might be clearly without any Laws, if the King ſhould pleaſe to ſuſpend them.

'Tis true, we ſay, the laſt King *Charles* was prevailed upon, by Miſ-information, to make a Diſpenſation, ſomewhat of the nature of this, though not ſo full an one; for that diſpenſed only with ſome few Ceremonies, and things of that nature: But the Houſe of Commons (this taking Air) in 1662. repreſent this to the King, by a Petition. And what is it that they do repreſent? That he, by his Diſpenſation, has undertaken to do that, which nothing but an Act of Parliament can do; that is, the diſpenſing with Penal Laws; which is only to be done by Act of Parliament. And thereupon it was thought fit, upon the King's Account, to bring in an Act for it, in ſome Caſes.

My Lord, The King did then, in his Speech to the Parliament (which we uſe, as a great Argument againſt this Diſpenſing Power) ſay this, "That, conſide-"ring the Circumſtances of the Nation, he could wiſh with all his Heart, that he "had ſuch a Power, to diſpenſe with ſome Laws, in ſome Particulars. And thereupon, there was a Bill, in order to an Act of Parliament, brought in, giving the King a Power to diſpenſe; but, my Lord, with a great many Qualifications. Which ſhews plainly, that it was taken by the Parliament, that he had no Power to diſpenſe with the Laws, of himſelf.

My Lord, Afterwards, in 1672. the King was prevailed upon again, to grant another Diſpenſation, ſomewhat larger.——

L. C. J. Brother *Pemberton*, I would not interrupt you, but we have heard of this over and over again already.

Mr. *S. Pemberton.* Then, ſince your Lordſhip is ſatisfied of theſe things (as I preſume you are) elſe I ſhould have gone on, I have done, my Lord.

Mr. *S. Levinz*, But, my Lord, we ſhall go a little higher than that, and ſhew, that it has been taken all along, as the ancient Law of *England*, that ſuch Diſpenſations ought to be by the King and the Parliament, and not by the King alone.

Mr. *Soll. Gen.* My Lord, if you will admit every one of the Council to Speech it, before they give their Evidence, when ſhall we come to an End of this Cauſe? We ſhall be here till Midnight.

L. C. J. They have no Mind to have an End of the Cauſe, for they have kept it three Hours longer than they need to have done.

Mr. *S. Pemberton.* My Lord, This Caſe does require a great deal of Patience.

L. C. J. It does ſo, Brother; and the Court has had a greas deal of Patience: But we muſt not ſit here only to hear Speeches.

Mr. *Att. Gen.* Now, after all their Speeches, of two Hours long, let them read any thing, if they have it.

Sir *Rob. Sawyer.* We will begin with the Record of *Richard* the Second—— Call *William Fiſher.*

William Fiſher, *Clerk to Mr.* Ince, *ſworn.*

L. C. J.

L. C. J. What do you ask him?

Sir *Rob. Sawyer.* Shew him that Copy of the Record.

The Record was then ſhewn him.

L. C. J. Where had you thoſe, Sir?

Mr. *Fiſher.* Among the Records in the *Tower.*

L. C. J. Are they true Copies?

Mr *Fiſher.* Yes, my Lord.

L. C. J. Did you examine them by the Record?

Mr *Fiſher* Yes, my Lord.

Sir *Rob. Sawyer.* Then hand them in; put them in.

Clerk reads. *Ex Rotulo Parliamenti de Anno Regni Regis* Richardi *Secundi XV.* N° 1.——— My Lord, It is written in *French*, and I ſhall make but a bad Reading of it.

Sir *Sam. Aſtrey.* Where is the Man that examin'd it?——— Do you underſtand *French?*

Mr. *Fiſher.* Yes, my Lord.

Sir *Rob. Sawyer.* The Record is in another Hand than this; they may eaſily read it.

Mr. *Soll. Gen.* Who copy'd this Paper?

Mr. *Fiſher.* I did examine it.

Mr. *Soll. Gen.* What did you examine it with?

Mr. *Fiſher.* I look'd upon that Copy, and Mr. *Halſtead* read the Record.

L. C. J. Young Man, read out.

Fiſher reads. *Vendredy Lende maine del Almes qu'eſtoit le primier jour*———

Mr. *Soll. Gen.* Pray, tell us what it is you would have read?

Mr. *S. Levinz.* I'll tell you what it is, Mr. *Sollicitor:* 'Tis the Diſpenſation with the Statute of Proviſors: And the Act of Parliament does give the King a Power to diſpenſe, till ſuch a time.

Mr. *Soll. Gen.* Don't you think the King's Prerogative is affirmed by many Acts of Parliament?

Mr. *S. Levinz:* If the King could diſpenſe without an Act of Parliament, what need was there for the making of it?

Mr. *Soll. Gen.* Mr. *Serjeant*, We are not to argue with you about that yet.

L. C. J. Read it in *Engliſh*, for the Jury to underſtand it.

Mr. *Fiſher.* My Lord, I cannot undertake to read it ſo readily in *Engliſh.*

Mr. *J. Powel.* Why don't you produce the Records that are mentioned in the Petition, thoſe in King *Charles* the Second's time?

Mr. *S. Levinz.* We will produce our Records in Order of Time, as they are.

Sir *Sam. Aſtrey.* There is the Clerk of the Records of the *Tower*, Mr. *Halſtead*, will read it very well in *French*, or *Engliſh.*

Then Mr. *Halſtead* was ſworn to interpret the Records into *Engliſh*, according to the beſt of his Skill and Knowledge; but not reading very readily——— a true Copy of the Record in *Engliſh* follows, out of the Rolls of Parliament, in the 15th Year of King *Richard* the Second, *Numero Primo.*

"*Friday*, the Morrow of *All Souls*, which was the firſt Day of this Parlia-
"ment, holden at *Weſtminſter*, in the fifteenth Year of the Reign of our
"Lord, King *Richard* the Second, after the Conqueſt, the Reverend Father in
"God, the Archbiſhop of *York*, Primate and Chancellor of *England*, by the King's
"Commandment, being preſent in Parliament, pronounced and declared, very
"nobly and wiſely, the Cauſe of the Summons of this Parliament: And ſaid, Firſt,
"That the King would, that holy Church principally, and afterwards the Lords
"Spiritual and Temporal, and alſo the Cities and Burroughs, ſhould have and
"enjoy their Liberties and Franchiſes, as well as they had them, and enjoyed
"them, in the Time of his Noble Progenitors, Kings of *England*; and alſo, in
"his own Time. And afterwards ſaid, The Summons of this Parliament was
"principally for three Occaſions: The firſt Occaſion was, To ordain how the
"Peace and Quiet of the Land, which have heretofore been greatly blemiſhed and
"diſturbed,

" diſturbed, as well by Detraction and Maintenance, as otherwiſe, might be bet-
" ter holden and kept, and the Laws better executed, and the King's Commands
" better obeyed. The ſecond Occaſion was, To ordain and ſee how the Price of
" Wools, which is, beyond meaſure, leſſened and impaired, might be better amen-
" ded and inhaunced. And alſo, That in caſe the War ſhould begin again, at the End
" of the preſent Truce, to wit, at the *Aſſumption of our Lady* next coming, to or-
" dain and ſee, how and whereby the ſaid War may be maintained at the leaſt
" Charge of the People. And the third Occaſion was, touching the Statutes of
" Proviſors, To ordain and ſee how our Holy Father might have that which to
" him belongs; and the King, that which belongs to him, and to his Crown; ac-
" cording unto that, *Render unto* Cæſar *the things that are* Cæſar's, *and unto God the*
" *things which are God's.*

Then the other Record of *Richard* the Second was read as follows, out of the Rolls of Parliament, the fifteenth Year of King *Richard* the Second (N° 8.)

" Be it remembred, touching the Statute of *Proviſors*, That the Commons, for
" the great Confidence which they have in the Perſon of our Lord the King, and
" in his moſt excellent Knowledge, and in the great Tenderneſs which he hath for
" his Crown, and the Rights thereof; and alſo, in the noble and high Diſcre-
" tions of the Lords, *have aſſented, in full Parliament, that our ſaid Lord the King,*
" by Advice and Aſſent of the ſaid Lords, *may make ſuch Sufferance*, touching the
" ſaid Statute, as ſhall ſeem to him reaſonable and profitable, until the next Parlia-
" ment, ſo as the ſaid Statute be not repealed in no Article thereof: And that all
" thoſe who have any Benefices by force of the ſaid Statute, before this preſent
" Parliament; and alſo, That all thoſe, to whom any Aid, Tranquility, or Ad-
" vantage is accrued, by virtue of the ſaid Statute of the Benefices of Holy Church
" (of which they were heretofore in Poſſeſſion) as well by Preſentation, or Col-
" lation of our Lord the King, as of the Ordinaries, or Religious Perſons whatſoever,
" or by any other manner or way whatſoever; may freely have and enjoy them, and
" peaceably continue their Poſſeſſion thereof, without being ouſted thereof, or any
" ways challenged, hindred, moleſted, diſquieted, or grieved hereafter, by any
" *Proviſors*, or others, againſt the Form and Effect of the Statute aforeſaid, by
" reaſon of the ſaid Sufferance in any time to come. *And moreover, That the ſaid*
" *Commons may diſagree at the next Parliament, to this Sufferance, and fully reſort to the*
" *ſaid Statute*, if it ſhall ſeem good to them to do it: *With Proteſtation*, That this
" Aſſent, *which is a Novelty, and has not been done before this time, be not drawn into*
" *Example or Conſequence for Time to come.* And they prayed our Lord the King,
" that the Proteſtation might be entred of Record, in the Roll of the Parliament:
" And the King granted, and commanded to do it.

Mr. *S. Levinz.* Now, my Lord, we will go on.——— This was in *Richard* the Second's Time: And a Power is given by the Commons, to the King, with the Aſſent of the Lords, to diſpenſe, but only to the next Parliament; with a Power reſerved to the Commons; and to diſagree to it, and retract that Conſent of theirs the next Parliament.

Sir *Geo. Treby.* The Statute of *Proviſors* was and is a Penal Law, and concerning Eccleſiaſtical Matters too; *viz.* The Collating and Preſenting to Archbiſhopricks, Biſhopricks, Benefices, and Dignities of the Church: And in this Record, now read, the Parliament give the King a limited Power, and for a ſhort Time, to diſpenſe with that Statute. But, to obviate all Pretence of ſuch a Power's being inherent in the Crown, as a Prerogative, they declare, (1.) That it was a *Novelty*; that is as much as to ſay, That the King had no ſuch Power before. (2.) That it ſhould not be drawn into *Example*; that is to ſay, That he ſhould have no ſuch Power for the future.

Mr. *S. Levinz.* Now we will go on to the Records mentioned in the Petition; thoſe in the laſt King's Time, in 1662, and 1672; and that in this King's Time, in 1685.——— Where is the Journal of the Houſe of Lords?

Mr. Walker *ſworn.*

L. C. J. Is that the Book of the Houſe of Lords?

Mr. *Walker*. It is the Journal of the Houſe of Lords.

L. C. J. Is it kept by you?

Mr. *Walker*. Yes, my Lord.

L. C. J. Where is it kept?

Mr. *Walker*. In the uſual place, here in *Weſtminſter*.

Mr. *Soll. Gen.* What is that?

Mr. *S. Levinz*. It is the Journal of the Houſe of Lords. —— But, my Lord, there is one thing that is mentioned in the laſt Record that is read, which is worth your Lordſhip's, and the Jury's Obſervation; That it is declared a Novelty, and a Proteſtation, that it ſhould not be drawn into Precedent for the future.

L. C. J. That has been obſerved, Brother: Let us hear your Record read.

Clerk reads.—— *Die* Mercurii 18° *die* Februarii, 1662.

"His Majeſty was preſent this Day, ſitting in the Regal Crown and Robes, "the Peers being likewiſe in their Robes: The King gave Order to the Gentle- "man Uſher of the Black Rod, to ſignifie to the Houſe of Commons his Pleaſure, "that they preſently come up, and attend His Majeſty, with their Speaker; who "being preſent, His Majeſty made this Speech following.

"*My Lords, and Gentlemen*;

"I Am very glad to meet you here again, having thought the Time long ſince we "parted, and often wiſhed you had been together, to help me in ſome Occa- "ſions which have fallen out: I need not repeat them unto you, you have all had "the Noiſe of them in your ſeveral Countries; and, God be thanked, they were "but Noiſe, without any worſe Effects.

"To cure the Diſtempers, and compoſe the differing Minds that are yet amongſt "us, I ſet forth my Declaration of the 26th of *December*. In which you may ſee, "I am willing to ſet Bounds to the Hopes of ſome, and to the Fears of others; of "which, when you ſhall have examined well the Grounds, I doubt not but I ſhall "have your Concurrence therein. The truth is, I am, in my Nature, an Enemy "to all Severity for Religion and Conſcience, how miſtaken ſoever it be, when it "extends to Capital and Sanguinary Puniſhments; which, I am told, were began "in Popiſh Times. Therefore, when I ſay this, I hope I ſhall not need to warn "any here, not to inferr from thence, that I mean to favour Popery. I muſt con- "feſs to you, there are many of that Profeſſion, who, having ſerved my Father, "and my ſelf very well, may fairly hope for ſome part in that Indulgence, I would "willingly afford to others who diſſent from us. But let me explain my ſelf, leſt "ſome miſtake me herein, as I heard they did in my Declaration: I am far from "meaning by this, a Toleration, or Qualifying them thereby to hold any Offices, "or Places of Truſt in the Government. Nay, further; I deſire ſome Laws may "be made, to hinder the Growth and Progreſs of their Doctrine.

"I hope you have all ſo good an Opinion of my Zeal for the Proteſtant Reli- "gion, as I need not tell you, I will not yield to any therein, not to the Biſhops "themſelves; nor in my liking the Uniformity of it, as it is now eſtabliſhed; "which being the Standard of our Religion, muſt be kept pure, and uncorrupted, "free from all other Mixtures. *And yet, if the Diſſenters will demean themſelves "peaceably and modeſtly under the Government, I could heartily wiſh, I had ſuch a Power "of Indulgence to uſe upon Occaſion.*——

Sir *Geo. Treby*. Pray Sir, read that out diſtinctly.

Clerk reads. ——"I could heartily wiſh I had ſuch a Power of indulgence to "uſe upon Occaſion, as might not needleſly force them out of the Kingdom; or, "ſtaying here, give them Cauſe to conſpire againſt the Peace of it.

"*My Lords, and Gentlemen*:

"It would look like Flattering in me, to tell you, in what degree I am confident "of your Wiſdom and Affection in all things that relate to the Greatneſs and Pro- "ſperity of the Kingdom. If you conſider well what is beſt for us all, I dare ſay, "we ſhall not diſagree. I have no more to ſay to you at preſent, but, once again, "to bid you heartily welcome.

Mr. *Finch*.

Mr. *Finch* The next thing we ſhall ſhew you is, that after the King had made this Speech, and wiſhed he had ſuch a Power of Indulgence to uſe upon Occaſion, there was a Bill in the Houſe of Lords brought in, to enable the King to diſpenſe with ſeveral Laws: We ſhall ſhew you the Journal, where it was Read and Committed; but further than that it went not.

L. C. J. What Uſe do you make of this, Mr. *Finch?*

Sir *Rob. Sawyer.* You may eaſily apprehend the Uſe we ſhall make of it. (The King, in his Speech, ſays, *He wiſh'd he had ſuch a Power*;) the Houſe of Lords thought he had not; and therefore they order'd a Bill to be brought in, to enable him.——— Read the Journal of the Lords, of the 13th of *March*, 1662.

Clerk reads. *Die* Veneris XIII^o *die* Martii, 1662.

"After ſome Debate, whether the Houſe ſhould be put into a Grand Committee, for the further Debate of the Bill concerning His Majeſty's Power in Eccleſiaſtical Affairs, it was put to the Queſtion; (*viz.*).

"As many of your Lordſhips as would have this Houſe adjourned, and put into a Committee, to conſider of the ſaid Bill, ſay, *Content*; others, *Not Content*.

"Paſſed in the Affirmative.

"And then the Lord Chamberlain of the Houſhold was directed to take the Chair, as formerly; which he did accordingly.

"And after Debate, the Houſe was reſumed, after the Grand Committee had appointed a Sub-Committee, touching the ſaid Bill.

Sir *Rob. Sawyer.* This is all in the Journal of the Houſe of Lords, about this Matter.——— We will now ſhew you the Bill it ſelf.

Clerk reads. "*An Act concerning His Majeſty's Power in Eccleſiaſtical Affairs.*

"WHereas divers of His Majeſty's Subjects, through Error of Judgment, and "miſ-guided Conſciences (whereunto the Licentiouſneſs of theſe late unhappy Times have much contributed) do not conform themſelves to the Order of Divine Worſhip and Service eſtabliſhed by Law; and although His Majeſty and both Houſes of Parliament are fully ſatisfied, that thoſe Scruples of Conſcience, from whence this Nonconformity ariſeth, are ill grounded; and that the Government of the Church, with the Service thereof (as now eſtabliſhed) is the beſt that is any where extant, and moſt effectual to the Preſervation of the Proteſtant Religion: Yet hoping that Clemency and Indulgence may, in time, wear out thoſe Prejudices, and reduce the Diſſenters to the Unity of the Church; and conſidering that this Indulgence, how neceſſary ſoever, cannot be diſpenſed by any certain Rule, but muſt vary, according to the Circumſtances of Time, and the Temper and Principles of thoſe, to whom it is to be granted; and His Majeſty being the beſt Judge, when, and to whom this Indulgence is to be diſpenſed, or as may be moſt conſiſtent with the publick Peace, and without juſt Cauſe of Offence to others; and to the end His Majeſty may be enabled to exerciſe it with univerſal Satisfaction, Be it Enacted by the King's Moſt Excellent Majeſty, by Advice, and with the Conſent of the Lords Spiritual and Temporal, and Commons, in this preſent Parliament aſſembled, and by the Authority thereof, That the King's Majeſty may, by Letters Patents under the Great Seal, or by ſuch other Ways as to His Majeſty ſhall ſeem meet, *diſpenſe with one Act, or Law, made the laſt Seſſion of this preſent Parliament* (intituled, *An Act for the Uniformity of Publick Prayers, and Adminiſtration of the Sacraments, and other Rites and Ceremonies; and for Eſtabliſhing the Form of Making, and Ordaining, and Conſecrating Biſhops, Prieſts and Deacons in the Church of* England) and with any other Laws or Statutes concerning the ſame; or requiring Oaths, or Subſcriptions; or which do enjoin Conformity to the Order, Diſcipline and Worſhip eſtabliſhed in this Church, and the Penalties in the ſaid Laws impoſed, or any of them: And may grant Liſences to ſuch of His Majeſty's Subjects of the Proteſtant Religion, of whoſe inoffenſive and peaceable Diſpoſition His Majeſty ſhall be perſwaded, to enjoy and uſe the Exerciſe of their Religion and Worſhip, though differing from the publick Rule; (the ſaid Laws and Statutes, or any Diſabilities, Incapacities, or Penalties, in them, or any of them contained, or any Matter or Thing to the contrary thereof notwithſtanding.)

Provided

" *Provided always, and be it Enacted*, That no ſuch Indulgence, Licence, or Diſ-
" penſation hereby to be granted, *ſhall extend, or be conſtrued to extend to the Tolera-*
" *ting, or Permitting the Uſe or Exerciſe of the Popiſh, or Roman Catholick Religion* in
" this Kingdom; *nor to enable any Perſon or Perſons, to hold or exerciſe any Place or*
" *Office of publick Truſt* within this Kingdom, who, at the Beginning of this pre-
" ſent Parliament, were, by the Laws and Statutes of this Realm, diſenabled
" thereunto; nor to exempt any Perſon or Perſons from ſuch Penalties, as are by
" Law to be inflicted upon ſuch as ſhall publiſh or preach any thing to the Depra-
" vation, or Derogation of the Book of *Common Prayer*, or the Government, Or-
" der and Ceremonies of the Church eſtabliſhed by Law.

" *Provided alſo, and be it Enacted*, That no ſuch Licence or Diſpenſation *ſhall ex-*
" *tend to make any Prieſt or Miniſter capable of any Eccleſiaſtical Living* or Benefice,
" with Cure, who ſhall not, before the Archbiſhop of the Province, or Biſhop of
" the Dioceſs, where he lives, *make ſuch Subſcription to the Articles of Religion*, as is
" enjoined by the Statute of the 13th of *Elizabeth*, made for Reformation of Diſ-
" orders in the Church. *Nor ſhall extend, or be conſtrued to extend to diſpenſe with*
" *the Book of Common Prayer*: But that the ſaid Book ſhall be conſtantly read in all
" the Cathedral and Collegiate Churches, and in all the Pariſh-Churches, and pub-
" lick Chapels.

Sir *Rob. Sawyer*. Here your Lordſhip ſees what the Lords did in this Matter.—— We ſhall now ſhew you, out of the Commons Journal, what they did, concerning this Speech of the King.——— Shew the Journal of the 25th of *February*, 1662.

Mr. Jodrell *ſworn.*

L. C. J. Did you examine that, Mr. *Jodrell?*
Mr *Jodrell*. It is the Original Book.

The Book delivered into the Court.

Clerk reads. *Die* Mercurii XXV^to *die* Februarii, 15 Car. II. Reſolved, that it be preſented.———
Sir *Rob. Sawyer*. You muſt begin above.——— The Houſe then took into Debate ———

Clerk reads. " The Houſe then took into Debate the Matter touching Indul-
" gence to Diſſenters, from the Act of Uniformity.
" The Queſtion being put, that the Preſent Debate be adjourned till To-
Morrow Morning.
" The Houſe was divided.
" The *Yeas* went out.
Sir *John Goodrick*, and Sir *William Lowther*, } " Tellers for the *Noes*; with the *Noes*, 161.
" Sir *Richard Temple*, and " Sir *John Talbott*, } Tellers for the *Yeas*; with the *Yeas*, 119.
" And ſo it paſſed in the Negative.
" Reſolved, *&c.*
" That it be preſented to the King's Majeſty, as the humble Advice of this
" Houſe, That no Indulgence be granted to the Diſſenters, from the Act of Uni-
" formity———

Mr. *Soll. Gen.* Does your Lordſhip think it to be Evidence?
L. C. J. Let them read it, Mr. *Sollicitor*, that we may hear what it is.

Clerk

Clerk reads on.

'Ordered that a Committee be appointed to collect and bring in the Reaſons of this 'Houſe for this Vote, upon the preſent debate; to be preſented to his Majeſty, and that 'the nominating of the Committee be adjourned till to morrow morning.

Sir *Rob. Sawyer.* That's all.

Mr. *S. G.* Pray, if there be any thing more, read on; you ſhall not parcel out a Record, and take, and leave what you will.

Mr. *Finch.* Did not you parcel out our Petition?

Mr. *S. G.* Read on, if there be any thing about this matter.

Clerk. That is all.

Sir *Rob. Sawyer.* Turn to the 27th of *Februdry*, 1662.

Clerk reads. *Veneris xxvii.* Februarii *xv.* Car. *II.*

'Sir *Heneage Finch* reports from the Committee appointed to collect and bring in the 'Reaſons of the Houſe for their Vote of Advice to the King's Majeſty; and in the cloſe 'of thoſe Reaſons to add, That the Houſe will aſſiſt his Majeſty with their Lives and For-'tunes, and to pen an Addreſs to his Majeſty for that purpoſe; the ſeveral Reaſons and Ad-'dreſs agreed by the Committee in writing, he read in his place, and did after bring up, 'and deliver the ſame in at the Clerk's Table.

'The Firſt Paragraph was read, and upon the queſtion agreed to.

'The Second Paragraph was read, and upon the queſtion agreed to.

'The Third was read, and upon the queſtion agreed to.

Sir *Rob. Sawyer.* Go over that, and go to the Addreſs it ſelf.

Clerk reads. 'May it pleaſe your moſt Excellent Majeſty:

'We your Majeſty's moſt Dutiful and Loyal Subjects, the Knights, Citizens and Bur-'geſſes of the Houſe of Commons, in Parliament aſſembled, having with all fidelity and 'obedience conſidered of the ſeveral matters compriſed in your Majeſty's late Gracious 'Declaration of the 26th of *December* laſt, and your moſt Gracious Speech at the begin-'ning of this preſent Seſſion, Do in the firſt place for our ſelves, and in the names of all 'the Commons of *England*, render unto your Sacred Majeſty the tribute of our moſt 'hearty thanks for that infinite Grace and Goodneſs wherewith your Majeſty hath been 'pleaſed to publiſh your Royal Intention of adhereing to your Act of Indempnity and 'Oblivion by a conſtant and religious obſervance of it; and our hearts are further en-'larged in theſe returns of Thankſgiving, when we conſider your Majeſty's moſt Princely 'and Heroick profeſſion of relying upon the Affections of your People, and the abhorring 'all ſorts of Military and Arbitrary Rule: but above all, we can never enough remember 'to the honour of your Majeſty's Piety, and our own unſpeakable Comfort, thoſe ſolemn 'and moſt endearing Invitations of us your Majeſty's Subjects, to prepare Laws to be pre-'ſented to your Majeſty againſt the growth and increaſe of Popery; and withal, to provide 'more Laws againſt Licenciouſneſs and Impiety, at the ſame time declaring your own Re-'ſolutions for maintaining the Act of Uniformity: and it becomes us always to ac-'knowledg and admire your Majeſty's Wiſdom in this your Declaration, whereby your 'Majeſty is pleaſed to reſolve, not only by ſumptuary Laws, but by your own Royal Ex-'ample of Frugality, to reſtrain that exceſs in mens Expences, which is grown ſo ge-'neral, and ſo exorbitant, and to direct our endeavours to find out fit and proper Laws 'for advancement of Trade and Commerce.

'After all this, we moſt humbly beſeech your Majeſty to believe; *That it is with extreme 'unwillingneſs and reluctancy of heart that we are brought to differ from any thing which your 'Majeſty hath thought fit to propoſe*; and though we do no ways doubt but that the unrea-'ſonable diſtempers of mens Spirits, and the many Mutinies and Conſpiracies which were 'carried on during the late intervals of Parliament, did reaſonably encline your Majeſty to 'endeavour by your Declaration to give ſome allay to thoſe ill humours, till the Parlia-'ment aſſembled, and the hopes of an Indulgence, if the Parliament ſhould conſent to it, 'eſpecially ſeeing the Pretenders to this Indulgence did ſeem to make ſome title to it by ver-'tue of your Majeſty's Declaration from *Bredah*; *Nevertheleſs, we your Majeſty's moſt Dutiful 'and Loyal Subjects*, who are now returned to ſerve in Parliament from thoſe ſeveral parts 'and places of your Kingdom, for which we are choſen, *Do humbly offer it to your Majeſty's 'great Wiſedom, that it is in no ſort adviſeable that there be any Indulgence to ſuch perſons who*

'presume to dissent from the Act of Uniformity, and Religion established (for these Rea-
'sons.)

'We have considered the nature of your Majesty's Declaration from *Bredah*, and are
'humbly of opinion, That your Majesty ought not to be pressed any further.

'Because it is not a Promise in it self, but only a Gracious Declaration of your Majesty's
'Intentions to do what in you lay, and what a Parliament should advise your Majesty to
'do, and no such Advice was ever given, or thought fit to be offered; nor could it be other-
'wise understood, because there were Laws of Uniformity then in being, which could not
'be dispenced with but by Act of Parliament.

Sir *Rob. Sawyer.* This is all that we read this for; your Lordship and the Jury see what is here declared by the Parliament, That the Act of Uniformity could not be dispensed with, without an Act of Parliament.

Next, My Lord, we shall shew you what was done in the Year 1672. —— Read the King's Speech the 5th of *February*, 1672.

The Journals of the Lords House were delivered in.

Clerk reads. '*Die Mercurii*, 5. Febr. 1672.

'*My Lords and Gentlemen*,

'I am glad to see you here this day. I would have called you sooner together, but
'that I was willing to ease you and the Country, till there were an absolute ne-
'cessity.

'Since you were last here, I have been forced to a most important, necessary and ex-
'pensive War, and I make no doubt but you will give me suitable and effectual assistance
'to go through with it; I refer you to my Declaration for the causes, and indeed the ne-
'cessity of this War; and shall now only tell you, That I might have digested the Indig-
'nities to my own Person, rather than have brought it to this Extremity, if the In-
'terest as well as the Honour of the whole Kingdom had not been at stake; and if I
'had omitted this Conjuncture, perhaps I had not again ever met with the like ad-
'vantage.

'You will find that the last Supply that you gave me, did not answer Expectation
'for the ends you gave it, the payment of my Debts; therefore I must in the next place
'recommend them again to your special Care.

'Some few days before I declared the War, I put forth my Declaration for Indulgence
'to Dissenters, and have hitherto found a good effect of it, by securing my peace at home,
'when I had war abroad; There is one part in it, that has been subject to Misconstru-
'ctions, which is that concerning the Papists, as if more liberty was granted to them
'than to other Recusants, when 'tis plain there is less; for the others have publick Places
'allowed them, and I never intended that they should have any, but only have the free-
'dom of their Religion in their own Houses, without any concourse of others; and I could
'not grant them less than this, when I had extended so much more Grace to others,
'most of them having been loyal, and in the service of me and the King my Father: And
'in the whole course of this Indulgence I do not intend that it shall any way prejudice
'the Church, but I will support its Rights, and It in its full power.

'Having said this, I shall take it very ill to receive contradiction in what I have done;
'and I will deal plainly with you, I am resolved to stick to my Declaration.

'There is one Jealousie more which is maliciously spread abroad, and yet so weak
'and frivolous, that I once thought it not of moment enough to mention; but it may
'have gotten some ground with some well-minded people, and that is, That the Forces
'which I have raised in this War were designed to controul Law and Property; I wish I
'had had more Forces the last Sommer, the want of them then, convinces me, I must
'raise more against this next Spring; and I do not doubt but you will consider the
'charge of them in your Supplies.

'I will

'I will conclude with this assurance to you, That I will preserve the true Reformed 'Protestant Religion, and the Church, as it is now Established in this Kingdom, and 'that no Mans Property or Liberty shall ever be invaded. I leave the rest to the Chan- 'cellor.

Mr. *S. Pemb.* Now go to the Journal of the Commons of the 14*th* of *February*, 1672.

The Journal put in.

Clerk Reads, '*Veneris xiiij. die Februarii*, 1672.

'Mr. *Powle* Reports from the Committee appointed to prepare, and draw up a Petition 'and Address to his Majesty, The said Petition and Address, which he read in his 'place, and afterwards delivered the same in at the Clerks Table, and the same being again 'twice read, is as followeth, (*viz.*)

'*Most Gracious Sovereign*,

'We your Majesties most Loyal and Faithful Subjects, the Commons Assembled in 'Parliament, do in the first place, as in all Duty bound, return your Majesty our most 'humble and hearty Thanks, for the many Gracious Promises and Assurances which 'your Majesty has several times during this Present Parliament given to us, That your 'Majesty would Secure and Maintain unto us the true Reformed Protestant Religion, our 'Liberties and Properties, which most gracious Assurances your Majesty out of your great 'Goodness has been pleased to renew unto us, more particularly, at the Opening of this 'present Session of Parliament.

'And further, we crave leave humbly to represent, That we have with all Duty and 'Expedition, taken into our Consideration, the several parts of your Majesties last Speech 'to us; and withal, the Declaration therein mentioned, for Indulgence to Dissenters, dated 'the 15*th* of *March* last: **And we find our selves bound in Duty to inform 'your Majesty, That Penal Statutes in Matters Ecclesiastical, 'cannot be Suspended but by Act of Parliament.**

'*We therefore*, the Knights, Cittizens and Burgesses of your Majesties House of Com- 'mons, *do most humbly beseech your Majesty, That the said Laws may have their free Course, 'until it shall be otherwise provided for by Act of Parliament.* And that your Majesty would 'graciously be pleased to give such Directions herein, that no Apprehensions or Jea- 'lousies may remain in the Hearts of your Majesties good and faithful Subjects.

'Resolved, *&c.*

'That this House doth agree with the Committee in the Petition and Address by them 'drawn up, to be presented to his Majesty.

Sir *Rob. Sawyer.* Now turn to the 24*th* of *February*, 1672. in the same Book.

Clerk Reads. '*Lunæ* 24*th* of *February*, 1672.

'Mr. Secretary *Coventry* Reports and Presents in Writing from his Majesty, his Answer to 'the humble Petition and Address of this House, which was thrice read, and the Matter 'debated, and is as followeth, (*viz.*)

CHARLES R.

'HIS Majesty hath received an Address from you, and he hath seriously considered 'of it, and returns you this Answer, That he is very much troubled, that that 'Declaration which he put out for ends so necessary, for the quiet of his Kingdom, and 'especially in that Conjuncture, should have proved the Cause of disquiet in his House of 'Commons, and give occasion to the questioning of his Power in Ecclesiasticks, which he 'finds not done in the Reigns of any of his Ancestors: He is sure he never had thoughts 'of using it otherwise than as it hath been intrusted in him, to the Peace and Establish- 'ment of the Church of *England*, and the ease of all his Subjects in general. *Neither 'does he pretend to the Right of Suspending any Laws, wherein the Properties, Rights or Liber- 'ties of any of his Subjects are concerned, nor to alter any thing in the established Doctrine or Disci- 'pline of the Church of* England. But his only design in this, was to take off the Penalties 'the Statutes inflicted upon Dissenters, which he believes when well considered of, you 'your selves would not wish executed according to the Rigour and Letter of the Law; 'neither hath he done this with any thought of avoiding or precluding the Advice of his

'Parliament;

'Parliament; and if any Bill ſhall be offered, which ſhall appear more proper to attain the 'aforeſaid Ends, and ſecure the Peace of the Church and Kingdom, when tendred in 'due manner to him, he will ſhew how readily he will Concur in all ways that ſhall ap-'pear good for the Kingdom.

Sir *Rob. Sawyer.* Turn to the 26*th* of *February*, 1672.

Clerk read. 'Die Mercurii xxvj. *February*, 1672.

'Mr. *Powle* Reports from the Committee, appointed to conſider of an Anſwer to re-'turn to his Majeſties laſt Meſſage, upon the debate of the Houſe, an Anſwer agreed by 'the Committee, and drawn up, and put into Writing, which he read in his place, and 'then delivered the ſame in at the Clerks Table, where it was twice read, and is as fol-'loweth, (*viz.*)

Moſt Gracious Sovereign,

'WE your Majeſties moſt Humble and Loyal Subjects, the Knights, Citizens and 'Burgeſſes in this preſent Parliament Aſſembled, do render to your moſt Sacred 'Majeſty, our moſt dutiful Thanks, for that to our unſpeakable Comfort, your Majeſty 'has been pleaſed ſo often to reiterate unto us thoſe gracious Promiſes and Aſſurances of 'maintaining the Religion now Eſtabliſhed, and the Liberties and Properties of your 'People; and we do not in the leaſt Meaſure doubt but that your Majeſty had the ſame 'gracious Intention in giving Satisfaction to your Subjects, by your Anſwer to our laſt 'Petition and Addreſs; Yet upon a ſerious Conſideration thereof, *We find that the ſaid 'Anſwer is not ſufficient to clear the Apprehenſions that may juſtly remain in the minds of your 'People, by your Majeſties having claimed a Power to ſuſpend Penal Statutes in Matters Eccleſi-'aſtical, and which your Majeſty does ſtill ſeem to aſſert in the ſaid Anſwer, to be intruſted in the 'Crown, and never queſtioned in the Reigns of any of your Anceſtors.* Wherein we humbly 'conceive your Majeſty has been very much Miſinformed: *Since no ſuch Power ever was 'claimed or exerciſed by any of your Majeſties Predeceſſors; and if it ſhould be admitted, might 'tend to the interrupting the free Courſe of the Laws, and altering the Legiſlative Power, 'which hath always been acknowledged to reſide in your Majeſty, and your two Houſes of Parlia-'ment.*

'We therefore with an unanimous Conſent become again moſt humble Suiters unto 'your Sacred Majeſty, *That you would be pleaſed to give us a full and ſatisfactory Anſwer to 'our ſaid Petition and Addreſs, and that your Majeſty would take ſuch effectual order, that the 'Proceedings in this Matter may not for the future be drawn into Conſequence or Ex-'ample.*

'The Anſwer to his Majeſties Meſſage, was again read by Paragraphs, and the ſeveral 'Paragraphs to the laſt, were upon the queſtion ſeverally agreed.

'The laſt Paragraph being read, and the Queſtion being put, that the Word *unanimous* 'ſhould ſtand in the Paragraph.

The Houſe divided. ——— The *Noes* go out.

Tellers,
Lord St. *John* } for the *Yeas*, 180.
Mr. *Vaughan* }

Sir *Richard Temple* }
Sir *Philip Howard* } for the *Noes*, 77.

'And ſo it was reſolved in the Affirmative.

'The Queſtion being put to agree to the Paragraph, it was reſolved in the Affirmative.

'Reſolved, *&c.*

'That the whole Addreſs be agreed to, as it was brought in by the Committee.

Sir *Rob. Sawyer*, Now turn to the Lords Journal, and there your Lordſhip will ſee, that the King does Communicate this Addreſs to the Lords, and deſires their Advice.

Read the 1*ſt* of *March*, 1672.

Clerk reads, *Die Sabbati primo die Martii*, 1672.

'His Majeſty this Day made a ſhort Speech, as follows.

My

My Lords,

'You know, that at the Opening of this Seſſion, I ſpoke here to your Satisfaction; it 'has notwithſtanding, begotten a greater diſquiet in the Houſe of Commons, than I could 'have imagined.

'I received an Addreſs from them, which I looked not for, and I made them an An'ſwer that ought to have contented them; but on the contrary, they have made me a 'Reply of ſuch a nature, that I cannot think fit to proceed any further in this Matter 'without your Advice.

'I have commanded the Chancellor to acquaint you with all the Tranſactions, 'wherein you will find both me and your ſelves highly concerned: I am ſenſible for what 'relates to me, and I aſſure you, my Lords, I am not leſs ſo for the Privileds, and the 'Honour of this Houſe.

'Afterwards the Lord Chancellor read the ſeveral Papers of Addreſſes of the Houſe of 'Commons, and his Majeſties Anſwer thereunto, and opened his Majeſties proceedings 'upon them.

The Addreſs of the Houſe of Commons was read.

Sir *Rob. Sawyer*. Paſs over that, you have read it already.

Clerk reads, The next, his Majeſties Anſwer to the Addreſs of the Houſe of Commons, was read as follows,——

Sir *Rob. Sawyer*. That hath been read too.

Clerk reads, Then was read the Reply of the Houſe of Commons to his Majeſties Anſwer, as followeth,——

Mr. *Finch*. You have read that likewiſe.

Clerk reads, 'Upon this it is ordered, that the Lord Treaſurer, Duke of *Buckingham*, 'Earl of *Bridgwater*, Earl of *Northampton*, Earl of *Briſtol*, Earl of *Berks*, Earl of *Bulling'brook*, and the Earl of *Angleſy*, do forthwith withdraw and conſider what humble 'Thanks is fit to be given to his Majeſty for his great Favour in communicating this 'Buſineſs to this Houſe, and report the ſame. And accordingly, the ſaid Lords Com'mittees did withdraw themſelves for that purpoſe.

'The Lords being returned, the Duke of *Buckingham* reported what the Com'mittee had prepared to preſent to his Majeſty by way of Thanks, which was read as 'followeth.

'We the Lords Spiritual and Temporal in Parliament aſſembled, do unanimouſly pre'ſent to your Sacred Majeſty, Our moſt humble Thanks, for having been pleaſed to 'Communicate to us, what has paſſed between your Majeſty and the Houſe of Commons, 'whereby you have graciouſly offered us the means of ſhewing our Duty to your 'Majeſty, and of aſſerting the Ancient Juſt Rights and Priviledges of the Houſe of 'Peers.

'The Queſtion being put, whether to agree with the Committee.

'It was reſolved in the Affirmative.

'Ordered that his Majeſty be deſired, that his Speech, and the Papers read this day, 'may be entred into the Journal Book of this Houſe.

'The Lord *Treaſurer*, the Duke of *Buckingham*, and the Lord *Chamberlain*, are ap'pointed to attend his Majeſty preſently, to know his pleaſure, what time and place, 'this whole Houſe ſhall wait upon him, to preſent the humble Thanks of this Houſe, for 'his great Favour ſhewed this day.

'Ordered, that upon *Monday* morning next, this Houſe will debate the whole Mat'ter of his Majeſties Speech, and theſe Papers; and to conſider the Points of Privileds, 'and what elſe may ariſe thereupon.

'The Lords that were appointed to attend his Majeſty, return with this 'Anſwer.

'That his Majeſty has appointed this Afternoon at five of the Clock, for this Houſe to 'wait upon him in the Banquetting-houſe at *Whitehall*.

'Ordered that all the Judges now in Town, ſhall attend this Houſe on *Monday* morn'ing next.

Sir *Rob. Sawyer*. The 3*d* of *March*, 1672. is the next.

Clerk reads, '*Die Lunæ* 3. *die Marcii*, 1672.

'The Lord *Chancellor* reported, That the whole Houſe on *Saturday* laſt, waited upon 'his Majeſty at *Whitehall*, and preſented the humble Addreſs of this Houſe, and his Ma'jeſty was pleaſed to return this Anſwer.

My Lords,

'I take this Addreſs of yours very kindly; I will always be very affectionate to you, 'and expect you ſhould ſtand by me, as I will always by you.

'Then the Houſe took into Conſideration the whole Matter of his Majeſties Speech 'on *Saturday*, and the three Papers which his Majeſty acquainted this Houſe withal, 'and all the ſaid Papers in their order were read, and after a long debate, the Queſtion 'being put,

'Whether this Houſe ſhall in the firſt place enter into Conſideration of giving Advice 'to his Majeſty?

'It was reſolved in the Affirmative.

'It is ordered, that this Buſineſs ſhall be taken into Conſideration to morrow Morn-'ing, at nine of the Clock, the firſt Buſineſs.

'Ordered that the Judges now in Town, ſhall attend to morrow Morning.

Sir *Rob. Sawyer*. The 4*th* of *March*, 1672.

Clerk reads, 'Next, The Houſe took into Conſideration the Advice to be given to his 'Majeſty concerning the Addreſſes made to him from the Houſe of Commons.

'The Addreſſes of the Houſe of Commons, and his Majeſties Anſwer were read, and 'after a long debate, the Queſtion being put, Whether the King's Anſwer to the Houſe 'of Commons in referring the Points now controverted to a Parliamentary way by Bill, 'is good and gracious, that being a proper and natural Courſe for Satisfaction therein.

It was reſolved in the Affirmative.

Sir *Rob. Sawyer*. The 8*th* of *March*, 1672.

Clerk reads, *Die Sabbati* 8° *die Marcii*, 1672.

'His Majeſty in his Royal Throne, adorned with his Crown and Regal Ornaments, 'commanded the Gentleman *Uſher* of the *Black Rod*, to give notice to the Houſe of 'Commons, that they attend his Majeſty preſently.

'The Commons being come with their Speaker, his Majeſty made this ſhort Speech, 'following.

My Lords and Gentlemen,

'Yeſterday you preſented me an Addreſs, as the beſt means for the ſatisfying and 'compoſing the Minds of my Subjects, to which I freely and readily agreed, and I ſhall 'take care to ſee it performed accordingly.

'I hope on the other ſide, you Gentlemen of the Houſe of Commons will do your 'part; for I muſt put you in mind, it is near five Weeks ſince I demanded a Supply, 'and what you Voted unanimouſly upon it, did both give Life to my Affairs at Home, 'and diſhearten mine Enemies abroad; but the ſeeming delay it hath met withal ſince, 'hath made them to take new Courage, and they are now preparing for this next Sum-'mer a greater Fleet, (as they ſay) than ever they have had yet, ſo that if the Supply 'be not very ſpeedily diſpatcht, it will be altogether ineffectual, and the Safety, Ho-'nour and Intereſt of *England*, muſt of neceſſity be expoſed. Pray lay this to heart, 'and let not the Fears and Jealouſies of ſome draw an inevitable Ruin upon us all.

My Lords and Gentlemen,

'*If there be any Scruple remaining with you, concerning the Suſpenſion of Penal Laws, I 'here faithfully Promiſe you, That what has been done in that particular, ſhall not for the future 'be drawn either into Conſequence or Example.* And as I daily expect from you a Bill 'for my Supply, ſo I aſſure you, I ſhall as willingly receive and paſs any other you 'ſhall offer me that may tend to the giving you ſatisfaction in all your juſt Grievances.

'Next, my Lord Chancellor reported, That both Houſes waited upon the King ye-'ſterday, and preſented him with the Addreſs againſt the growth of Popery, and his 'Majeſty has been pleaſed to return this Anſwer.

My Lords and Gentlemen,

'I do heartily agree with you in your Addreſs, and ſhall give ſpeedy Order to have 'it put in Execution; there is one part to which I believe it is not your Intention that it 'ſhould extend; for I can ſcarce ſay, thoſe are in my pay, that are preſently to be imployed 'abroad; but as for all other parts, I ſhall take care it ſhall be done as you deſire.

'After which the Lord *Chancellor* ſaid, he had ſomewhat more to impart to the Houſe 'by the Kings Command, which was,

That

That his Majeſty laſt night, having ſpoken with ſeveral Members of both Houſes, *found ſome diſſatisfaction remaining concerning* his Anſwer to their Addreſs in the particular of *the Officers to be employed abroad*, of which number he had five or ſix that were of the beſt Officers of *France* and *Flanders*, and being his own Subjects, he had been very ſollicitous to get; *but if that bred any umbrage, the King commanded him to let them know, that he reſolves to give both his Houſes full ſatisfaction to their deſires.*

There was another particular that the Lord Chancellor ſaid he thought fit to acquaint them with, which, though it was by his Majeſty's leave, yet it was not by his Command, however he thought it his duty to acquaint the Houſe with it, (Mr. Secretary *Coventry* intending to acquaint the Houſe of Commons with the ſame) *That his Majeſty had the laſt night, in purſuance of what he then intended, and declared this morning, concerning the ſuſpenſion of Penal Laws not being for the future drawn either into Conſequence or Example, cauſed the Original Declaration, under the Great Seal, to be cancelled in his preſence, whereof himſelf and ſeveral other Lords of the Council were Witneſſes.*

Sir *Rob. Sawyer.* Turn to the 10th of *March*, 1672.

Clerk reads. 'Die Lune decimo die Marcii, 1672.

'Ordered, That what my Lord Chancellor ſaid on Saturday laſt concerning 'his Majeſty's cauſing the vacating his Indulgence under the Great Seal of *Eng-* 'gland, ſhall be entred into the Journal-Book of this Houſe as on Saturday 'laſt.

Sir *Rob. Sawyer.* We ſhall now come to that which paſt in the Parliament in 1685. —Read the 9th of *November* 1685.

The Journal of the Lords, 1685. put in.

Clerk Reads. 'His Majeſty being on his Royal Throne adorned with his Regal 'Robes and Crown (the Lords being in their Robes alſo) commanded the 'Gentleman Uſher to give notice to the Houſe of Commons that they immedi- 'ately attend his Majeſty; who being come, his Majeſty made the following 'Speech.

'*My Lords and Gentlemen*,

'After the Storm that ſeemed to be coming upon us when we parted laſt, 'I am glad to meet you all again in ſo great peace and quietneſs; God Al- 'mighty be praiſed, by whoſe bleſſing that Rebellion was ſuppreſſed; but when 'I reflect what an inconſiderable number of men began it, and how long they 'carried it on without any oppoſition, I hope every body will be convinced that 'the Militia, which hath hitherto been ſo much depended upon, is not ſufficient 'for ſuch Occaſions, and that there is nothing but a good force of well diſci- 'plined Troops in conſtant pay that can defend us from ſuch as either at home 'or abroad are diſpoſed to diſturb us.

'And, in truth, my concern for the peace and quiet of my Subjects, as well as 'for the ſafety of the Government, made me think it neceſſary to increaſe the 'number to the proportion I have done; this I owed as well to the honour as to 'the ſecurity of the Nation, whoſe Reputation was ſo infinitely expoſed unto all 'our Neigbours, by having lain open to this late wretched Attempt; that it is 'not to be repaired without keeping ſuch a Body of Men on foot, that none may 'ever have the thoughts again of finding us ſo miſerably unprovided.

'It is for the ſupport of this great Charge, which is now more than double to 'what it was, that I ask your aſſiſtance in giving me a Supply anſwerable to 'the Expence it brings along with it; And I cannot doubt, but what I have be- 'gun ſo much for the honour and defence of the Government, will be continued by 'you with all the chearfulneſs and readineſs that is requiſite for a Work of ſo great 'importance.

'*Let no man take Exception that there are ſome Officers in the Army not qualified according to the late Teſts* for their Imployments: The Gentlemen, I muſt tell you, are moſt of them 'well known to me, and having formerly ſerved with me on ſeveral Occaſions, and al-

ways

' ways approved the Loyalty of their Principles by their Practices, I think them fit ' now to be employed under me; and will deal plainly with you, that after having ' had the benefit of their Services in ſuch time of need and danger, *I will neither ex-* ' *poſe them to diſgrace, nor my ſelf to the want of them, if there ſhould be another Rebellion* ' *to make them neceſſary to me.*

' I am afraid ſome men may be ſo wicked to hope and expect that a difference ' may happen between you and me upon this Occaſion; but when you conſider what ' advantages have riſen to us in a few months by the good underſtanding we have ' hitherto had, what wonderful effects it has already produced in the change of the ' whole ſcene of Affairs abroad, ſo much more to the honour of the Nation, and the ' figure it ought to make in the World, and that nothing can hinder a further pro- ' greſs in this way, to all our ſatisfactions, but Fears and Jealouſies amongſt our ' ſelves: I will not apprehend that ſuch a misfortune can befall us as a Diviſion, or ' but a Coldneſs between me and you; nor that any thing can ſhake you in your Steadi- ' neſs and Loyalty to me, who, by God's bleſſing, will ever make you all returns of ' kindneſs and protection, with a Reſolution to venture even my own Life in the de- ' fence of the true Intereſt of this Kingdom.

Sir *Rob. Sawyer.* Turn to the Commons Journal the 16th of *November*, 1685.

The Journal of the Houſe of Commons put in.

Clerk reads. ' *Die Lune xvi. die* Novemb. 1685.

' *Moſt Gracious Sovereign:*

' We your Majeſty's moſt Loyal and Faithful Subjects, the Commons in Parliament ' aſſembled, do in the firſt place (as in duty bound) return your Majeſty our moſt ' humble and hearty thanks for your great care and conduct in the ſuppreſſion of the ' late Rebellion, which threatned the overthrow of this Government both in Church ' and State, and the uttermoſt extirpation of our Religion by Law eſtabliſhed, which ' is moſt dear unto us, and which your Majeſty has been pleaſed to give us repeated ' aſſurances you will always defend and ſupport, which with all gratetul hearts we ſhall ' ever acknowledg.

' We further crave leave to acquaint your Majeſty, That we have with all duty and ' readineſs taken into our conſideration your Majeſty's gracious Speech to us; *and as to* ' *that part of it relating to the Officers in the Army not qualified for their Imployment according* ' *to an Act of Parliament made in the 25th year of the Reign of your Majeſty's Royal Brother* ' of bleſſed memory, Intituled, An Act for preventing danger that may happen by Po- ' piſh Recuſants: *We do out of our bounden duty humbly repreſent unto your Majeſty, That thoſe* ' *Officers cannot by Law be capable of their Imployments, and that the Incapacities they bring* ' *upon themſelves thereby, can no ways be taken off but by Act of Parliament.*

' *Therefore* out of the great deference and duty we owe unto your Majeſty (who has ' been graciouſly pleaſed to take notice of their Services to you) *we are preparing a Bill* ' *to paſs both Houſes for your Royal Aſſent, to indemnify them from the Penalties they have now* ' *incurred; and becauſe the continuance of them in their Employments may be taken to be a di-* ' *ſpencing with that Law without Act of Parliament, the conſequence of which is of the greateſt* ' *concern to the Rights of all your Majeſty's Dutiful and Loyal Subjects, and to all the Laws* ' *made for the ſecurity of their Religion;*

' *We therefore*, the Knights, Citizens and Burgeſſes of your Majeſty's Houſe of Com- ' mons, *do moſt humbly beſeech your Majeſty, that you would be graciouſly pleaſed to give ſuch* ' *directions therein, that no Apprehenſions or Jealouſies may remain in the hearts of your Maje-* ' *ſty's good and faithful Subjects.*

Mr. *Polixfen.* My Lord, We pray that theſe half dozen lines of the Statute 1 *Eliz.* may be read.

A Statute-book was then produced by Mr. *Ince.*

L. C. J. No, We will have it read out of our own Book, which was delivered into Court.

Clerk reads. This is 1 *Eliz. cap.* 2. An Act for Uniformity of Religion, *&c.* Whereabout is it?

Mr. *Ince.* 'Tis the 15th Paragraph, [at theſe words] —And for the due execution, *&c.*

Clerk

Clerk Reads. And for due Execution hereof, the Queens moſt Excellent Majeſty, the Lords Spiritual and Temporal in this preſent Parliament Aſſembled, do in Gods Name earneſtly Require and Charge all the Archbiſhops, Biſhops, and other Ordinaries, that they ſhall endeavour themſelves to the utmoſt of their knowledge, that the due and true Execution hereof may be had throughout their Dioceſſes and Charges, as they will anſwer before God for ſuch Evils and Plagues, wherewith Almighty God may juſtly puniſh his People for neglecting this good and wholeſom Law.

Mr. Serjeant Levinz. Now, my Lord, if your Lordſhip pleaſes, the Charge is a Charge for a Libel, and there are two things to be Conſidered.

Firſt, Whether the Biſhops did deliver this Paper to the King? But that we leave upon the Evidence that has been given; onely we ſay, there has been no direct proof of that.

In the next place, Suppoſing they did deliver this Petition to the King, Whether this be a Libel upon the Matter of it, the manner of delivering it, or the Perſons that did it?

And with ſubmiſſion, my Lord, this cannot be a Libel, although it be true, that they did ſo deliver it.

Firſt, my Lord, there is a little diſingenuity offered to my Lords the Biſhops, in only ſetting forth part and not the whole, in only reciting the Body and not the Prayer.

But, my Lord, with your Lordſhips favour, taking the Petitionary part, and adding it to the other, it quite alters the Nature of the thing, for it may be, a Complaint without ſeeking redreſs might be an ill matter; but here taking the whole together, it appears to be a Complaint of a Grievance, and a deſire to be eaſed of it.

With your Lordſhips favour, the Subjects have a right to Petition the King in all their Grievances, ſo ſay all our Books of Law, and ſo ſays the Statute of the Thirteenth of the late King; They may Petition, and come and deliver their Petition under the number of ten, as heretofore they might have done, (ſays the Statute) ſo that they all times have had a right ſo to do, and indeed if they had not, it were the moſt lamentable thing in the World, that Men muſt have Grievances upon them, and yet they not to be admitted to ſeek Relief in an humble way.

Now, my Lord, this is a Petition ſetting forth a Grievance, and praying his Majeſty to give Relief. And what is this Grievance? It is that Command of his, by that Order made upon my Lords the Biſhops, to diſtribute the Declaration, and cauſe it to be read in the Churches: And pray, my Lord, let us conſider, what the Effects and Conſequences of that Diſtribution and Reading is; It is to tell the People, that they need not ſubmit to the *Act of Uniformity*, nor to any Act of Parliament made about Eccleſiaſtical Matters, for they are ſuſpended and diſpenſed with; this my Lords the Biſhops muſt do, if they obey this Order; but your Lordſhip ſees, if they do it, they lie under an *Anathema* by the Statute of 1 *Eliz.* for there they are under a Curſe if they do not look to the preſervation and obſervation of that Act; But this Command to Diſtribute and Read the Declaration, whereby all theſe Laws are diſpenſed with, is to let the People know, they will not do what that Act requires of them.

Now, with your Lordſhips favour, my Lords the Biſhops lying under this preſſure, the weight of which was very grievous upon them, they by Petition apply to the King to be eaſed of it, which they might do, as Subjects; beſides, my Lord, they are Peers of the Realm, and were moſt of them ſitting as ſuch, in the laſt Parliament, where (as you have heard) it was declared, ſuch a Diſpenſation could not be, and then in what a Caſe ſhould they have been, if they ſhould have diſtributed this Declaration, which was ſo contrary to their own Actings in Parliament; What could they have anſwered for themſelves, had they thus contributed to this Declaration? when they had themſelves before declared, that the King could not diſpenſe.

And that was no new thing, for it had been ſo declared in a Parliament before, in two Seſſions of it, in the late Kings Reign, within a very little time one of another; and ſuch a Parliament that were ſo liberal in their Aides to the Crown, that a Man would not think they ſhould go about to deprive the Crown of any of its Rights; it was a Parliament that did do as great ſervices for the Crown as ever any did, and therefore there is no reaſon to ſuſpect, that if the King had had ſuch a power, they would have appeared ſo earneſt againſt it.

But, my Lord, if your Lordſhip pleaſes, theſe are not the beginnings of this matter, for we have ſhewed you from the Fifteenth of *Richard* the Second, that there was a power granted by the Parliament to the King to diſpenſe with a particular Act of Parliament, which argues, that it could not be without an Act of Parliament. And in 1662. 'tis ſaid expreſly, that they cannot be diſpenſed with, but by an Act of Parliament: 'Tis ſaid ſo again in 1672; the King was then pleaſed to aſſume to himſelf ſuch a power, as is pretended to in this Declaration; yet, upon Information from his Houſes of Parliament, the King declared himſelf ſatisfied, that he had no ſuch power, Cancelled his Declaration, and promiſed, that it ſhould not be drawn into Conſequence or Example. And ſo the Commons by their Proteſtation ſaid in *Richard* the Seconds time, That it was a Novelty, and ſhould not be drawn into Conſequence or Example.

Now, my Lord, if your Lordſhip pleaſes, if this matter that was Commanded the Biſhops to do, were ſomething which the Law did not allow of, ſurely then, my Lords, the Biſhops had all the reaſon in the World to apply themſelves to the King, in an humble manner to acquaint him, why they could not obey his Commands; and to ſeek relief againſt that, which lay ſo heavy upon them.

Truly, my Lord, Mr. Attorney was very right in the opening of this Cauſe at firſt, that is, That the Government ought not to receive affronts, no, nor the Inferior Officers are not to be affronted, a Juſtice of Peace, ſo low a Man in Office, is not, for a Man to ſay to a Juſtice of Peace, when he is executing his Office, that he does not do right, is a great Crime, and Mr. Attorney ſaid right in it; But ſuppoſe a Juſtice of Peace were making of a Warrant to a Conſtable, to do ſomething that was not *Legal* for him to do, if the Conſtable ſhould Petition this Juſtice of the Peace, and therein ſet forth, Sir, you are about to command me to do a thing, which, I conceive, is not *Legal*, ſurely that would not be a Crime that he was to be puniſhed for, for he does but ſeek relief, and ſhew his Grievance in a proper way, and the diſtreſs he is under.

My Lord, this is the Biſhops Caſe with ſubmiſſion, they are under a diſtreſs, being Commanded to do a thing which they take not to be *Legal*, and they, with all humility by way of Petition, acquaint the King with this Diſtreſs of theirs, and pray him, that he will pleaſe to give Relief.

My Lord, there is no Law, but is either an Act of Parliament, or the Common *Law*, for an Act of Parliament there is none for ſuch a power, all that we have of it in Parliamentary Proceedings, is againſt it; and for the Common Law, (ſo far as I have read of it) I never did meet with any thing of ſuch a Nature, as a Grant or Diſpenſation that pretended to diſpenſe with any one whole Act of Parliament; I have not ſo much as heard of any ſuch thing mentioned by any of the Kings Council; But here, my Lord, is a Diſpenſation that diſpenſes with a great many *Laws* at once, truly, I cannot take upon me to tell how many, there may be forty or above, (for ought I know.)

Therefore, my *Lord*, the Biſhops lying under ſuch a Grievance as this, and under ſuch a Preſſure, being Ordered to diſtribute this Declaration in all their Churches, which was to tell the People they ought to be under no Law in this Caſe, which ſurely was a very great Preſſure, both in point of Law and Conſcience too, they lying under ſuch Obligations to the contrary, as they did. With ſubmiſſion to your *Lordſhip* and you, Gentlemen of the Jury, If they did deliver this Petition, (Publiſhing of it I will not talk of, for there has been no proof of a Publication) but a delivering of a Petition to his Majeſty in the moſt ſecret and decent manner that could be imagined: My *Lords* the Biſhops are not guilty of the Matter Charged upon them in this Information; it has been expreſly proved, that they did not go to diſperſe it abroad, but only deliver'd it to the King himſelf; And, in ſhort, my Lord, if this ſhould be a Libel, I know not how ſad the Condition of us all would be, if we may not Petition, when we ſuffer.

Mr. Finch. My Lord, I Challenge them to ſhew us any one Inſtance of ſuch a Declaration, ſuch a General Diſpenſation of Laws from the Conqueſt, till 1672. The firſt Umbrage of ſuch a thing is, that of *Car.* 2. 1662, but your Lordſhip hears the Declaration of the Parliament upon it. Before that, as there was no ſuch thing, ſo your Lordſhip ſees, what the Parliament did to enable the King (not to do this thing, but ſomething like it) in *Richard* the Seconds Time, where you ſee the Parliament did give the King a Power to Diſpenſe with the Statute of Proviſors for a time; but at

the

the ſame time declared, that very Grant of their own, to be a Novelty, and that it ſhould not be drawn into Conſequence or Example.

My Lord, we ſhall leave it upon this Point, to ſuſpend Laws is all one, as to abrogate Laws, for ſo long as a Law is ſuſpended, whether the Suſpenſion be Temporary, or whether it be for ever, whether it be at once, or at ſeveral times, the Law is abrogated to all Intents and Purpoſes: But the Abrogation of Laws is part of the Legiſlature, that Legiſlative Power is lodged (as I ſaid before) and I could never find it otherwiſe in all our Law) in King, Lords, and Commons———

Ld. Ch. Juſt. You did open that before, Mr. *Finch.*

Mr. Finch. With this my Lord, That my Lords the Biſhops finding this Order, made upon them to publiſh this Declaration, did what in Duty they were bound to do, and unleſs the Jury do find, that they have done that which is contrary to Law, and to the Duty of their places, and that this Petition is a Libel, and a ſeditious Libel, with an intent to ſtir up Sedition among the People, (We rely upon it) My Lords, the Biſhops, can never be found Guilty upon this Information.

Ld. Ch. Juſt. Have you now done, Gentlemen?

Mr. Finch. Yes, my Lord, till they give us further occaſion, if they have any other Evidence to offer, we muſt Anſwer it, if not, this is the Anſwer we give to what they have ſaid.

Mr. Solicit. Gen. We make no Bargain with you: If you have done, ſay ſo.

Ld. Ch. Juſt. You muſt know, that you are not to have the laſt word.

Mr. Solicit. Gen. You have been three hours already, if you have any more to ſay, pray, conclude.

Mr. Finch. If they ſay they have no more Evidence, then we know what we have to do.

Ld. Ch. Juſt. If you do ſay any thing more, pray let me adviſe you one thing, don't ſay the ſame thing over and over again, for after ſo much time ſpent, it is irkſome to all Company, as well as to me.

Mr. Finch. My Lord, we have no more Evidence to offer to your Lordſhip at preſent, unleſs they, by offering new Evidence, give us occaſion to Reply upon them.

Ld. Ch. Juſt. Gentlemen, you ſhall have all the Legal favour and advantage that can be; but, pray, let us keep to an orderly decent Method of proceeding.

Sr. Rob. Sawyer. Pray, my Lord, favour me a word before we conclude, My Lord, I do find very few Attempts of this Nature, in any Kings Reign.

In the Reign of *Henry* the Fourth, there was an Act of Parliament that Foreigners ſhould have a Free Trade in the City of *London*, notwithſtanding the Franchiſes of *London*; after the Parliament roſe, the King iſſued out his Proclamation, forbidding the Execution of that Law, and Commanding that it ſhould be in Suſpence, *Uſque ad Proximum Parliamentum*, yet that was held to be againſt Law.

Ld. Ch. Juſt. Sir *Robert Sawyer*, that which you are to look to, is the publiſhing of this Paper, and whether it be a Libel or no. And as to the buſineſs of the Parliaments you mentioned, they are not to the purpoſe.

Sir Rob. Sawyer. My Lord, I ſay, I would put it where the Queſtion truly lyes, if they don't diſpute the Point, then we need not labour it; but I dont know, whether they will or no, and therefore I beg your Lordſhips favour to mention one Caſe more, and that is upon the Statute of 31 *Hen.* 8. *cap.* 8. Which enables the King by Proclamation in many Caſes to create the Law, which Statute was repealed by 1. *Edw.* 6. *cap.* 12. That very Act does recite, that the Law is not to be altered, or reſtrained, but by Act of Parliament, and therefore the Parliament enables the King to do ſo and ſo: But that was ſuch a Power, that the Parliament thought not fit to continue, and it was afterwards Repealed, but it ſhews, that at that time the Parliament was of the ſame Opinion, as to this Matter, that other Parliaments have been ſince.

Mr. Sommers. My Lord, I would only mention the great Caſe of *Thomas* and *Sorrel* in the Exchequer Chamber upon the validity of a Diſpenſation of the Statute of *Edward* the Sixth, touching Selling of Wine. There it was the Opinion of every one of the Judges, and they did lay it down as a ſetled Poſition, that there never could be an Abrogation, or a Suſpenſion, (which is a Temporary Abrogation) of an Act of Parliament, but by the Legiſlative Power. That was a Foundation laid down quite thorough the debate of that Caſe: Indeed it was diſputed, how far the King might diſpenſe with the Penalties in ſuch a particular Law, as to particular Perſons, but it was agreed, by all, that the King had no power to ſuſpend any Law: And, my Lord, I dare Appeal to Mr. Attorney General himſelf, whether in the Caſe of *Godden* and

Hales,

Hales, which was lately in this Court, to make good that Diſpenſation, he did not uſe it as an Argument then, that it could not be expounded into a Suſpenſion, He admitted, it not to be in Kings power, to ſuſpend a Law, but that he might give a Diſpenſation to a particular Perſon, was all, that he took upon him to juſtifie at that time.

My Lord, by the Law of all civilized Nations, if the Prince does require ſomething to be done, which the Perſon (who is to do it) takes to be unlawful, it is not only lawful, but his Duty, *Reſcribere Principi*, this is all that is done here, and that in the moſt humble manner, that could be thought of; your Lordſhip will pleaſe to obſerve how far it went, how careful they were, that they might not any way juſtly offend the King. They did not interpoſe by giving advice, as Peers, they never ſtirr'd till it was brought home to themſelves, when they made their Petition, all they beg, is, that it may not ſo far be inſiſted upon by his Majeſty, as to oblige them, to read it, whatever they thought of it, they do not take upon them to deſire the Declaration to be revoked.

My Lord, as to Mattters of Fact alledged in the ſaid Petition, that they are perfectly true, we have ſhewn by the Journals of both Houſes. In every one of thoſe Years, which are mentioned in the Petition, this Power of Diſpenſation was conſidered in Parliament, and, upon debate, Declared to be contrary to Law, there could be no Deſign to diminiſh the Prerogative, becauſe the King hath no ſuch Prerogative.

Seditious, my Lord, it could not be, nor could poſſibly ſtir up Sedition in the minds of the People, becauſe it was preſented to the King, in private and alone, falſe it could not be, becauſe the Matter of it is true. There would be nothing of Malice, for the occaſion was not ſought, the thing was preſſed upon them, and a Libel it could not be, becauſe the intent was innocent, and they kept within the bounds ſet by the Act of Parliament, that gives the Subject leave to apply to his Prince by Petition, when he is agrieved.

Mr. Att. Gen. Have you done, Gentlemen?

Mr. Finch. We have done, Sir.

Mr. Att. Gen. My Lord, I ſhall be a great deal more merciful to your Lordſhip, and the Jury, than they have been, who have ſpent theſe four hours, in that which I think is not pertinent to the Caſe in Queſtion: They have let themſelves into large Diſcourſes, making great Complaints of the Hardſhips put upon my Lords, the Biſhops, by the Order of Councel to read his Majeſties Declaration; and putting theſe words into the Information of Seditious, Malicious and Scandalous: But, my Lord, I admire that Sir *Robert Sawyer* ſhould make ſuch Reflections, and Obſervations upon theſe words, when I am ſure he will ſcarce find any one of his own exhibiting, that has ſo few of thoſe aggravating words as this has, and therefore, that might have been very well ſpared, eſpecially by him.

In the next place, my Lord, we are told, what great Danger our Religion is in by this Declaration, I hope we have an equal concern for that with them, or any Perſon elſe whatſoever: But however, I am ſure our Religion teaches us, not to preſerve our Religion, or our Lives, by any illegal Courſes, and the Queſtion is, whether the Courſe that my Lords the Biſhops have taken to preſerve (as they ſay) our Religion, be Legal or not; if it be not Legal, then I am ſure our Religion will not juſtifie the uſing ſuch a Courſe, for never ſo good an End.

My Lord, for the thing it ſelf, I do admire that they, in ſo long a time and ſearch that they have made, ſhould not (which I expected) produce more Preſidents of ſuch a Paper as this is; They challenge us to ſhew, that ever there was any ſuch Declaration as this, I'le turn the ſame Challenge upon them; Shew me any one inſtance, that ever ſo many Biſhops did come under pretence of a Petition, to reflect upon the King out of Parliament.

Sir *Robert Sawyer.* Is that your way of Anſwering, Mr. Attorney.

Mr. Attorney General. Pray, Sir *Robert Sawyer*, you have had your time, don't interrupt us, ſure we have as much right to be heard as you.

Lord Chief Juſtice. You have been heard over and over again, Sir *Robert Sawyer*, already.

Sir *Robert Sawyer.* My Lord, I don't intend to interrupt him.

Mr. Solicitor General. We cannot make them be quiet, they will ſtill be chopping in upon us.

Mr. Attorney General. That is an Art that ſome People have always practiſed, not to permit any body to ſpeak, but themſelves.

But, my Lord, I ſay, that thoſe few Inſtances, that they have produced, are nothing at all to this Matter, that is now upon Trial before your Lordſhip and this Jury; nay, they are Evidences againſt them, for they are only matters tranſacted in Parliament, which are no more to be applied to this thing that is in Controverſy now, than any the moſt remote matter that could be thought of; and though they have gone ſo high in point of time, as to the Reign of *Richard* the Second, yet they have nothing between that and the late Kings Reign, to which at laſt they have deſcended down.

But, my Lord, I ſay, that all the talk of *Richard* the Seconds time is wholly out of the Caſe; truly, I do not doubt, but that in *Richard* the Seconds time they might find a great many Inſtances of ſome ſuch ſort of Petitioning as this, for our Hiſtories tell us, that at that time they had 40000 Men in Arms againſt the King, and we know the troubles that were in that Kings Reign, and how at length he was depoſed; but certainly there may be found Inſtances more applicable to the Caſe, than thoſe they produce; as for thoſe in King *Charles* the Seconds time, do they any ways juſtifie this Petition? for now they are upon juſtifying the words of their Petition, that this power has been declared to be illegal in 1662, 1672, and 1685.

For what was done in 1662, do they ſhew any thing more than ſome Debates in the Houſe of Commons? And at laſt an Addreſs, an Anſwer by the King, a Reply of the Commons, and then the thing dies. Pray, my Lord, is a Tranſaction in the Houſe of Commons, a Declaration of Parliament? Sure, I think, no one will affirm that any thing can be a Declaration of Parliament, unleſs he that is the Principal part Concurs, who is the King? for if you ſpeak of the Court of Parliament in a Legal ſenſe, you muſt ſpeak of the whole Body, King, Lords, and Commons, and a Declaration in Parliament muſt be by all the whole Body, and that is properly an Act of Parliament.

Why then they come to the year 1672, where your Lordſhip obſerves, that the late King did inſiſt upon his Right, for after the Diſpute which was in 1662, his Majeſty did iſſue out another Declaration, and when it comes to be debated in Parliament, he inſiſts upon his Right in Eccleſiaſtical Matters, and though his Declaration was Cancelled, yet there is no formal Diſclaimer of the Right.

My Lord, after all, how far theſe things that they have offered may work, as to the point that they have debated, I ſhall not now meddle with it, nor give your Lordſhip any trouble about it, becauſe it is not at all pertinent to the Caſe in queſtion, for I do (after all this time and pains that they have ſpent) take leave to ſay, that theſe Gentlemen have ſpent all this time to no purpoſe.

Lord Ch. Juſt. Yes, Mr. Attorney, I'le tell you what they offer, which it will lie upon you to give an Anſwer to; They would have you ſhew, how this has diſturbed the Government, or diminiſhed the Kings Authority?

Mr. Att. Gen. Whether a Libel be true or not, as to the matter of Fact, was it ever yet in any Court of Juſtice permitted to be made a queſtion, whether it be a Libel or not? Or whether the Party be puniſhable for it; And therefore I wonder to hear theſe Gentlemen to ſay, that becauſe it is not a falſe one, therefore 'tis not a Libel: Suppoſe a Man ſhould ſpeak ſcandalous Matter of any Noble Lord here, or of any of my Lords the Biſhops, and a *Scandalum Magnatum* be brought for it, though that which is ſpoken has been true, yet it has been the Opinion of the Courts of

Law, that the Party cannot juſtifie it, by reaſon it tends to the diſturbing of the Peace, to publiſh any thing that is matter of Scandal; The only thing that is to be lookt into, is, whether there be any thing in this Paper, that is Reflecting and Scandalous, and not whether it be true or no, for if any Man ſhall *Extra-Judicially*, and out of a Legal Courſe and way, reflect upon any of the great Officers of the Kingdom, nay, if it be but upon any Inferior Magiſtrate, he is to be puniſhed, and is not to make his Complaint againſt them, unleſs he do it in a proper way; A Man may Petition a Judge, but if any Man in that Petition ſhall come and tell the Judge, Sir, you have given an Illegal Judgment againſt me, and I cannot in Honour, Prudence or Conſcience obey it, I do not doubt, nor will any Man, but that he that ſhould ſo ſay would be laid by the Heels, though the Judgment perhaps might be illegal.

If a Man ſhall come to Petition the King, as (we all know) the Council Doors are thronged with Petitioners every day, and Acceſs to the King by Petition is open to every body, the moſt Inferior Perſon is allowed to Petition the King, but becauſe he may do ſo, may he therefore ſuggeſt what he pleaſes in his Petition, ſhall he come and tell the King to his Face, what he does is Illegal? I only ſpeak this, becauſe they ſay, in this Caſe, his Majeſty gave them leave to come to him to deliver their Petition; but the King did not underſtand the Nature of their Petition, I ſuppoſe, when he ſaid, he gave them leave to come to him.

My Lord, for this Matter we have Authority enough in our Books, particularly there is the Caſe of *Wrenham* in my Lord *Hobart*, the Lord Chancellor had made a Decree againſt him, and he Petitioned the King, that the Cauſe might be reheard, and in that Petition he Complains of Injuſtice done him by my Lord Chancellor, and he put into his Petition many reflecting things, this, my Lord, was puniſhed as a Libel in the Star Chamber; and, in that Book it was ſaid, that though it be lawful for the Subject to Petition the King againſt any Proceedings by the Judges, yet it muſt not be done with Reflections, nor with Words that turn to the Accuſation or Scandal of any of the Kings Magiſtrates or Officers, and the Juſtice of the Decree is not to be queſtioned in the Caſe; for there *Wrenham* in his Defence would have opened the particulars, wherein he thought the Decree was unjuſt, but that the Court would not meddle with, nor would allow him to juſtifie for ſuch Illegality in the Decree; ſo in this Caſe, you are not to draw in queſtion the truth or falſehood of the Matter complained againſt, for you muſt take the way the Law has preſcribed, and proſecute your Right in a Legal Courſe, and not by Scandal and Libelling.

My Lord, there is a great deal of difference between not doing a thing that is Commanded, if one be of Opinion that it is unlawful, and coming to the King with a Petition highly reflecting upon the Government, and with Scandalous Expreſſions, telling him, Sir, you Act illegally, you requlre of us that which is againſt Prudence, Honour, or Conſcience, as my Lords the Biſhops are pleaſed to do in this Petition of theirs. I appeal to any Lord here, that if any Man ſhould give him ſuch Language, either by Word of Mouth or Petition, whether he would bear it, without ſeeking ſatisfaction and reparation by the Law?

My Lord, there is no greater proof of the Influence of this Matter than the Croud of this day, and the Harangue that hath been made, is it not apparent that the taking this Liberty to Canvas and diſpute the Kings Power and Authority, and to Cenſure his Actions, poſſeſs the People with ſtrange Opinions, and raiſes Diſcontents and Jealouſies, as if the free Courſe of Law were reſtrained, and Arbitrary Will and Pleaſure ſet up inſtead of it?

My Lord, there is one thing that appears upon the Face of the Information, which ſhews this not to be the right Courſe, and if my Lords the Biſhops had

given

given themſelves the opportunity of reading the Declaration ſeriouſly, they would have found in the end of the Declaration, that the King was reſolved to call a Parliament in *November*; might not my Lords the Biſhops have acquieſced under their paſſive Obedience till the Parliament met? But nothing would ſerve them, but this, and this muſt be done out of Parliament, for which there is no Preſident can be ſhewn, and this muſt be done in ſuch a manner, as your Lordſhip ſees the Conſequence of, by your Trouble of this Day.

There is one thing I forgot to ſpeak to, they tell us, that it is laid Malicious and Seditious, and there is no Malice or Sedition found, we know very well, that that follows the Fact, thoſe things ariſe by Conſtruction of Law out of the Fact. If the thing be illegal, the Law ſays it is Seditious, a Man ſhall not come and ſay, he meant no harm in it: That was the Caſe of *Williams* in his treaſonable Book, (ſays he) I only intended to warn the King of the Danger approaching, and concludes his Book with God ſave the King, but no Man will ſay, that a good Preface at the beginning, or a good Prayer at the end, ſhould excuſe Treaſon, or Sedition in the Body of a Book; if I meet another Man in the Street and kill him, though I never ſaw him in my Life, the Indictment is, that it was *ex Malitia Præcogitata*, as it often happens, that a Perſon kills one he never had acquaintance with before, and in *favorem vitæ*, if the Nature of the Fact be ſo, the Jury are permitted to find according to the Nature of the Caſe, but in ſtrictneſs of Law, there is Malice implyed: But, my Lord, I think theſe Matters are ſo Common, and that is a Point that has been ſo often ſetled, that the form of the Indictment and Information muſt follow the Nature of the Fact, that I need not inſiſt upon it, if the Act be unlawful, the Law ſupplies the Malice, and evil Intentions.

Mr. Solicit. Gen. My Lord and Gentlemen of the Jury, I am of Counſel in this Caſe for the King, and I ſhall take leave to proceed in this Method; Firſt, I ſhall put the Caſe of my Lords the Biſhops, and then conſider the Arguments that have been uſed in their Defence, and anſwer them as much as is material to be anſwered; and then leave it to your Lordſhip and the Juries Conſideration, whether what has been ſaid by theſe Gentlemen, weigh any thing in this Caſe?

Firſt, my Lord, I take it for granted, and I think the Matter is pretty plain by this time, by my Lord Preſidents Evidence, and their own Confeſſion; that it is not to be diſputed, but that this Paper was preſented by theſe Lords to the King, I think there is no great difficulty in that Matter at all, but I juſt touch upon it, becauſe I would follow them in their own Method.

Then, my Lord, let us take this Caſe as it is, upon the Nature of the Petition, and the Evidence that they have given, and then let us ſee, whether that will juſtifie the thing that is done: For the buſineſs of Petitioning, I would diſtinguiſh and enquire, Whether my Lords the Biſhops, out of Parliament, can preſent any Petition to the King: I do agree, that in Parliament the Lords and Commons may make Addreſſes to the King, and ſignifie their Deſires, and make known their Grievances there, and there is no doubt, but that is a natural and proper way of Application. For in the beginning of the Parliament, there are Receivers of Petitions appointed, and upon Debates, there are Committees appointed, to draw up Petitions and Addreſſes, but to come and deduce an Argument, that becauſe the Lords in Parliament have done thus, (there being ſuch Methods of Proceedings uſual in Parliaments) therefore my Lords the Biſhops may do it out of Parliament, that is certainly a *Non ſequitur*, no ſuch Concluſion can be drawn from theſe Premiſes.

My Lord, I ſhall endeavour to lay the Fact before you, as it really is, and then Conſider, what is proper for the Court to take notice of, as Legal Proof or Evi-

dence:

dence : And I take it, all thoſe Preſidents that they have produced, of what the Lords did, and what the Commons did, in Parliament, is no Warrant for them to ſhelter themſelves under, againſt the Information here in Queſtion.

Here *Mr. Juſt. Powel* ſpake aſide to the *Lord Chief Juſtice*, thus :

Mr. Juſt. Powel, My Lord, this is ſtrange Doctrine ; ſhall not the Subject have Liberty to Petition the King, but in Parliament ? If that be Law, the Subject is in a miſerable Caſe.

Ld. Ch. Juſt. Brother, let him go on, we will hear him out, tho' I approve not of his Poſition.

Mr. Solicit. General. The Lords may Addreſs to the King in Parliament, and the Commons may do it, but therefore, that the Biſhops may do it out of Parliament, does not follow. I heard nothing ſaid, that could have given Colour to ſuch a thing, but the Curſe that has been read in 1 *Elizabeth.*

But pray, my Lord, let us conſider that Evidence they have given, they have begun with that Record in *Richard* the Seconds time, and what is that ? That the King may diſpenſe with the Statute of Proviſors, till the meeting of the next Parliament, and a Proteſtation of the Commons at the end of it, whether that be an Act of Parliament, that is Declaratory of the Common Law, or Introductory of a new Law, *Non Conſtat* ; and for ought appears, it might be a Declaratory Act : And if ſo, it is a Proof of the Kings Prerogative of Diſpenſing. It might be an Act in Affirmance of the Kings Prerogative, as there are a great many ſuch, we very well know ; and generally moſt of the Laws, in that kind, are in Affirmance of the Kings power, ſo that the Law turns as an Argument for the King Prerogative, and they have given him that, which will turn upon themſelves, ſo it ſtood in *Richard* the Seconds time, but whether that be an Argument one way or other Concluſive, is left to your Lordſhip, and the Jury.

Ay, but ſay they, there is no Execution of ſuch a Power, till very lately, and the firſt Inſtance, that they produce, is, that in the Year 1662. But your Lordſhip knows, that before the Reign of *Henry* the Fourth, there was great Juriſdiction aſſumed by the Lords in Original Cauſes, then comes the Statute of Appeals, 1 *Hen.* 4. which takes notice that before that time, the Lords had aſſumed an Original Juriſdiction in all Cauſes, and would proceed, and determine them in Parliament, and out of Parliament, and it fell out to be ſo great a Grievance, that it was thought neceſſary to make a Law againſt it, that Appeals in Parliament ſhould be aboliſhed and deſtroyed, and then comes that Law in favour of the Subject of *England*, and that ſettles the bounds between the King and the Lords in a great meaſure ; before that time, the Lords were grown very powerful, and where there is a Power, there always will be Applications, and what is the effect of that Statute 1 *Hen.* 4. for all that we endeavour, is, to make things as plain can be, that no further Applications, no Accuſations, no Proceedings in any Caſe whatſoever be before the Lords in Parliament, unleſs it be by Impeachment of the Commons ; ſo that there is the *Salvo* ; and the uſe that I make of it, is this, The Commons by that very Statute did aboliſh the Power that the Lords had arrogated to themſelves, and Ordered, that they ſhould not meddle with any Cauſe, but upon the Impeachment of the Houſe of Commons, and eſtabliſh the Impeachment of the Commons, which is as ancient as the Parliament, for that was never yet ſpoken againſt ; the Power of the Commons Impeaching any Perſon under the degree of the Prince, and that is the regular legal way, and ſo the Commons aſſerted their Ancient Right, and whatſoever the Lords took notice of, muſt come by Application of the Commons, then Conferences were to paſs between the Houſes, and both Houſes by Addreſs apply to the King, this is the proper way and courſe of Parliament ; of which my Lord *Cook* ſays, It is known to few, and practiſed by fewer,

but

but it is a Venareble, Honourable way, and this is the Courſe that ſhould have been taken by my Lords here, and they ſhould have ſtayed till the Complaint had come from the Commons in Parliament, and then it had been Regular for them to Addreſs to the King; but they were too Quick, too Nimble.

And whereas the Statute of *Hen.* 4. ſays, That no Lord whatſoever ſhall intermeddle with any Cauſe, but by the Impeachment of the Commons, they interpoſe and give their advice before their time; if there be any Irregularity in Parliament, or out of Parliament, the Commons are to make their Complaint of it, and a Man muſt not be his own Judg, nor his own Carver, nor muſt every Man create Difficulties of his own, nor ſet upon Petitioning in this ſort: But there I lay my Foundation, That in ſuch a matter as this, there ought to have been the Impeachment of the Commons in Parliament before theſe Lords could do any thing; and I know nothing can be ſaid for the Biſhops more than this, That they were under an Anathema, under the Curſe that Sir *Robert Sawyer* ſpeaks of, and for fear of that they took this Irregular Courſe: But ſome would ſay, Better fall into the hands of God than of Men; ſome would ſay ſo, (I ſay) I know not what they would ſay; but theſe being the Methods that theſe Lords ſhould have taken, they ſhould have purſued that Method, the Law ſhould have carved out their Relief and Remedy for them, but they were for going by a new Fancy of their Own.

My Lord, the Law continued thus, and was practiſed ſo till the 3. *Hen.* 7. where the Grievance was found, that Offences in the Intervals of Parliament could not be well puniſhed, and then comes the Statute that ſets up the Court of Star-Chamber, and there Men were often brought to Judgment and Puniſhment for their Sins; and though very great Power was given them, yet they arrogated to themſelves a greater; and therefore that Court is aboliſhed by the Statute of the 15*th. Car.* 1. and what is the reaſon of aboliſhing that Statute? Becauſe the Star-Chamber did not keep within their bounds that the Law ſet them, but aſſumed to themſelves a larger Power than the Law would allow; and grew very Exorbitant and very Grievous to the Subject: And another reaſon was, which the Statute of 15*th. Car* 1. founded it ſelf upon, becauſe there was nothing that was brought in Judgment before that Court, but might be relieved and remedied in the ordinary methods of Juſtice in the Courts of *Weſtminſter* Hall: So that upon thoſe two Conſiderations, becauſe that Courſe was exorbitant, and becauſe all the Sins and Miſdemeanours that were puniſhed there, might be puniſhed in an ordinary way of Law in another Court, and therefore there was no need of that Court, and ſo it was aboliſhed, and the Subject was pretty ſafe; If there was a Crime committed here, a Man might come properly before your Lordſhip into this Court, and have it puniſhed.

My Lord, they find fault with the Words in the Information, and they ſay, Why are theſe Words put in, Seditious, Malicious? If the matter be Libellous and Seditious we may Lawfully ſay it, and it is no more than the Law ſpeaks, it reſults out of the Matter it ſelf; and, if it be a Libellous Paper, the Law ſays it is Maliciouſly and Seditiouſly done, and theſe Gentlemen need not quarrel with us, for ſo are all the Informations in all times paſt, and 'tis no more than the *Vi & Armis*, which is Common Form. It may be ſaid, How can the publiſhing of a Libel be ſaid to be done *Vi & Armis*? That is only a Suppoſition of Law; and they may as well Object to the concluſion of the Information, that it was *Contra Coronam & Dignitatem Domini Regis*; if it be an Illegal thing, or a Libel, theſe are neceſſary Conſequences, it is no more than the ſpeaking of the Law upon the Fact.

But, my Lord, let us a little conſider, whether this Matter were Warrantable, and whether they had any Warrant to do what was done; they pretend it was done upon this Account, That the King had ſet forth a Declaration, and had Ordered them to Read it; which to excuſe themſelves from, they make this Petition, or this Libel, (call it what you will) and they uſe this as the main Argument, That they ſay the King has done Illegally, and they tell the King plainly ſo, that it is Illegal; for they take notice of this Declaration, and ſay, it is Illegal; becauſe it is contrary to the Declarations of Parliament in 1662, 1672, and 1685.

Pray, my Lord, let us conſider a little, whether there be any Declaration in Parliament that they have given Evidence of; Have they read any Declaration of the Parliament in 1662? What is a Declaration in Parliament, but a Bill that is paſſed by the King, Lords, and Commons? That we know to be the meaning, and no other; if it paſs the Commons it is no Declaration in Parliament; nay, if it paſs the Lords and Commons, it is not a Declaration in Parliament, except it alſo paſs the King; all theſe things are Nullities, and the Law takes no notice of them; we have it in our Books over and over, and no Court ought to ſuffer ſuch Evidence to be given. I know theſe

Gentlemen are very well acquainted with the Authority in *Fitz-Herbert*'s, Title, Parliament, there was an Act that was ſaid to be by the King and the Lords, but becauſe the Commons did not agree to it, it is declared and adjudged to be a Nullity, and the Court would take no notice of it; and how can any Man call that a Declaration in Parliament, which is only a Vote of the Houſe of Commons, or of the Lords? No ſure; that is one of the Heads I go upon, It's not a Declaration in Parliament, unleſs it be by Act of Parliament.

Indeed, my Lord, there is another ſort of a Declaration in Parliament before the Lords, as they are a Court of Judicature, and that is a fair Declaration too; for if any thing comes Judicially before the Lords, either by Writ of Error, or by natural Appeal from any of the other Courts, or by Adjournment, and there be any Judgment given, That is a Declaration in Parliament, and may be fairly ſo called. So likewiſe there is another Judicial Declaration, which is, when any thing comes before the Lords Judicially, upon an Impeachment of the Commons, and they give Judgment upon that Impeachment, That is a Declaration in Parliament: But to ſay, that there is any other Declaration in Parliament, is to ſay more than theſe Gentlemen can make out; if they will ſhew me any ſuch I will ſubmit to them, and not ſpeak a Word againſt my Lords the Biſhops, but, if theſe Learned Gentlemen cannot ſhew me any ſuch, then they have not ſaid that was true in this Petition, that it was ſo and ſo declared in Parliament.

For let us conſider what there is in this Caſe upon this Evidence, for that in 1662. is only a Vote and an Opinion of the Houſe of Commons; and I always underſtood, and have been told ſo by ſome of the Gentlemen of the other ſide, that ſuch a Vote ſignifies nothing: But beſides, it ſeems to be a miſtaken Addreſs; for they ſay in it, That the Declaration in 1662. which they Addreſs againſt, was the firſt Declaration of that ſort, to ſuſpend Laws without Act of Parliament; and yet, in the ſame breath, they do take notice of the King's Declaration from *Breda*. But here is a mighty Argument uſed from the King's Speech, That becauſe he wiſhed he had ſuch a Power, this muſt be declared in Parliament that he had no ſuch Power: Is the Speech of the Prince a Declaration in Parliament? All the Speeches that were made upon the opening of the Parliament, will you ſay, they are Declarations in Parliament? Then the Chancellor, or the Keeper's Speech, or the Lord Privy Seals, muſt be a Declaration in Parliament. Whoever ſpeaks the Senſe of the King, if he does not ſpeak that which is Law and Right, is queſtionable for it, and ſeveral have been Impeached for ſo doing; for they look not upon it as the King's Speech, except it be according to Law: Nothing can turn upon the Prince but what is Legal; if it be otherwiſe, it turns upon him that ſpeaks it. I never did hear that a Speech made by the Chancellor (and I will appeal to all the Lords that hear me in it) was a Declaration in Parliament.

Then, my Lord, we come to the buſineſs in 1672. which with that in 1662. and that in *Breda*, ſhews, That this of the King's is not ſuch a Novelty, but has been done often before. In 1672. the King was in Diſtreſs for Money, being intangled in a Dutch War, and wanted Supply; He Capitulates with his Commons, you have heard it read, and, upon the Commons Addreſs, he aſſerts it to be his Right, and makes his Complaint to the Lords how the Commons had uſed him; for when he gives them a fair Anſwer, they Reply, and there are Conferences with the Lords about it; but at length it all ends in a Speech by the King, who comes and tells them of his preſent Neceſſities, and ſo he was minded to remit a little at the Inſtigation of the Commons, and he has a good Lump of Money for it. Would this amount to a Declaration in Parliament? Can my Lords the Biſhops fancy or imagine that this is to be impoſed upon the King, or upon the Court, for a Declaration in Parliament?

Then, laſt of all, for that in 1685. in this King's time, What is it? The Commons make an Addreſs to the King, and Complain to his Majeſty of ſome of his Officers in his Army, * that might pretend to have a Diſpenſation, ſomething of that Nature, contrary to the Teſt Act; And what is done upon it? They make their Application to the King, and the King Anſwers them, and that is all: But ſince it is ſpoken of in the Court I would take notice, That it is very well known by the Caſe of *Godding* and *Hales*, the Judgment of this Court was againſt the Opinion of that Addreſs.

But what ſort of Evidence is all this? Would you allow all the Addreſſes of the Houſe of Commons to be

* *Here Mr. Juſt.* Powel *ſpeaking to the Lord Chief Juſtice,*

Mr. J. Pow. My Lord, this is wide, Mr. Sollicitor would impoſe upon us; let him make out if he can, that the King has ſuch a Power, and Anſwer the Objections made by the Defendants Councel.

L. Ch. Juſt. Brother, impoſe upon us? he ſhall not impoſe upon me, I know not what he may upon you; for my part, I do not believe one word he ſays.

be Evidence? Give me leave to ſay it, my Lord, If you ſuffer theſe Votes, theſe Copies of Imperfect Bills, theſe Addreſſes, and Applications of one or both Houſes to the King, to be Evidence and Declarations in Parliament, then what will become of the * Bill of Excluſion? Shall any Body mention that Bill of Excluſion to be a Declaration in Parliament? If ſo, then there is Declaration againſt Declaration, the Declaration of the Commons againſt the Declaration of the Lords. I know not what Judgment my Lords the Biſhops may be of now, concerning thoſe things of Votes and Addreſſes being Declarations in Parliament, but I am ſure they have ſpoken againſt it heretofore; nay, I am ſure, ſome of them have Preached againſt it.

** Here there was a great Hiſſing.*

And if my Lords the Biſhops have ſaid, Theſe are Declarations in Parliament, and they are not Declarations in Parliament; and if they accuſe the King of having done an Illegal thing, becauſe he has done that which has been declared in Parliament to be Illegal, when it was never ſo declared, then the Conſequence is very plain, That they are Miſtaken ſometimes; and I ſuppoſe by this time they believe it.

I dare ſay, it will not be denied me, That the King may, by his Prerogative Royal, iſſue forth his Proclamation; it is as eſſential a Prerogative, as it is to give his aſſent to an Act of Parliament to make it a Law. And it is another Principle, which I think cannot be denied, That the King may make Conſtitutions and Orders in Matters Eccleſiaſtical; and that theſe he may make out of Parliament, and without the Parliament. If the King may do ſo, and theſe are his Prerogatives, then ſuppoſe the King does iſſue forth his Royal Proclamation (and ſuch in effect is this Declaration under the Great Seal) in a Matter Eccleſiaſtical, by Virtue of his Prerogative Royal, and this Declaration is read in the Council, and publiſhed to the World, and then the Biſhops come and tell the King, Sir, you have iſſued out an Illegal Declaration, being contrary to what has been declared in Parliament; when there is no Declaration in Parliament: Is not this a Diminiſhing the King's Power and Prerogative in iſſuing forth his Declaration? And making Conſtitutions in Matters Eccleſiaſtical? Is not this a queſtioning of his Prerogative? Do not my Lords the Biſhops in this Caſe raiſe a queſtion between the King and the People? Do not they (as much as in them lyes) ſtir up the People to Sedition? For who ſhall be Judg between the King and the Biſhops? (Says the King) I have ſuch a Power and Prerogative to iſſue forth my Royal Proclamation, and to make Orders and Conſtitutions in Matters Eccleſiaſtical, and that without the Parliament, and out of Parliament: Say my Lords the Biſhops, You have done ſo, but you have no Warrant for it. Says the King, Every Prince has done it, and I have done no more than what is my Prerogative to do: But this, ſay the Biſhops, is againſt Law. How ſhall this be tryed? Should not the Biſhops have had the Patience to have waited till a Parliament came? When the King himſelf tells them, he would have a Parliament in *November* at furtheſt.

L. Ch. Juſt. Pray, Mr. Sollicitor, come cloſe to the buſineſs, for it is very late.

Mr. Sol. Gen. My Lord, I beg your Patience; you have had a great deal of Patience with them, pray ſpare me a little. I am ſaying, when the King himſelf tells them, that he would have a Parliament in *November* at furtheſt, yet they have no Patience to ſtay till *November*, but make this Application to him. Is not this raiſing a Queſtion upon the King's Prerogative in iſſuing forth Declarations? and upon the King's Power and Right in Matters Eccleſiaſtical? And when I have ſaid this, that my Lords the Biſhops have ſo done; If they have raiſed a Queſtion upon the Right of the King, and the Power of the King in Matters Eccleſiaſtical, then they have ſtirred up Sedition. That they have ſo done is pretty plain; and for the Conſequence of it, I ſhall appeal to the Caſe in the 2 *Cro.* 2. *Jac.* 1. That is a plain direct Authority for me.

Mr. Juſt. Powel. Nay, Mr. Sollicitor, we all very well know, to deny the King's Authority in Temporals and Spirituals, as by Act of Parliament, is High Treaſon.

Mr. Sol. Gen. I carry it not ſo far, Sir; we have a Gracious Prince, and my Lords the Biſhops find it ſo by this Proſecution: But what ſays that Caſe? It is Printed in 3 Books, in *Noy* 100. in *Moor* 375. and in Mr. Juſt. *Cro.* 371. ſays that Caſe, The King may make Orders and Conſtitutions in Matters Eccleſiaſtical.

Mr. Juſt. Powel. But how will you apply that Caſe to this in hand, Mr. Sollicitor?

Mr. Sol. Gen. I will apply it by and by, Sir. I would firſt ſhew what it is; there is a Convention of the greateſt Men in the Kingdom.

Mr. Juſt. Powel. Indeed, Mr. Sollicitor, you ſhoot at Rovers.

Mr. Sol. Gen. There is the Lord Privy Seal, the Archbiſhop of *Canterbury*, and a great many others; it is the greateſt Aſſembly we meet with in our Books, and all of

of them are of this Opinion, That the King may make Orders and Conſtitutions in Matters Eccleſiaſtical.

My Lord, there is another Authority, and that is, from the Statute 1 *Eliz.* which erected the High Commiſſion Court, and that Statute was not Introductory of a New Law, but Declaratory of the Old Law; The King by his Proclamation declares his Senſe to do ſuch and ſuch a thing; the Court, and all Perſons there, give their Judgment and Opinion upon that Statute, That they looked upon it as the groſſeſt thing, and the ſouleſt affront to the Prince, for any Man to bring into Queſtion that Power of the King in Matters Eccleſiaſtical; 'tis ſaid to be a very High Crime. Why then, my Lord, what is done in this Caſe?

Mr. Juſt. Powel. Mr. Sollicitor, Pray, when you are applying, apply that other part of the Caſe too, which ſays, that it was a heinous Offence, to raiſe a Rumor that the King did intend to grant a general Toleration; and is there any Law ſince that has changed it, Mr. Sollicitor?

Mr. Sol. Gen. In the main, Judgment goes another way; as for that part, it was perſonal to the Prince that then was, of whom they had Scandalouſly reported, that he intended to do ſuch a thing; they look'd upon it as a Scandal to King *James*, that it was a ſowing Sedition, and ſtirring up People againſt the Government, and that will come up to our Caſe; for as ſome Men do it on the right ſide, others do it on the left; and whoever he be that endeavours to bring a diſlike of the King in the People, that is moving Sedition againſt the Prince, but that is perſonal to the Prince himſelf, and does not go to his Succeſſors.

Now, my Lord, I come to that which is very plain from the Caſe of *De Libellis Famoſis*; If any Perſon, in any Paper, have Slandered the Government, you are not to Examine who is in the Right, and who is in the Wrong, whether what they ſaid to be done by the Government be Legal or no; but whether the party have done ſuch an Act. If the King have a Power (for ſtill I keep to that) to Iſſue forth Proclamations to his Subjects, and to make Orders and Conſtitutions in matters Eccleſiaſtical, if he do Iſſue forth his Proclamation, and make an Order upon the matters within his Power and Prerogative; and if any one would come and bring that Power in Queſtion, I ſay, that is Sedition, and you are not to Examine the Legality, or Illegality of the Order or Proclamation; and, that I think is very plain upon that Caſe, in the Fifth *Report*, for it ſays, If a Perſon does a thing that is Libellous, you ſhall not Examine the Fact, but the Conſequence; whether it tended to ſtir up Sedition againſt the Publick, or to ſtir up Strife between Man and Man; in the Caſe of private Perſons, as if a Man ſhould ſay of a Judge, He has taken a Bribe, and I will prove it; this is not to be ſent in a Letter, but they muſt take a regular way to Proſecute it according to Law.

If it be ſo in the Caſe of an Inferior Magiſtrate, what muſt it be in the Caſe of a King, to come to the Kings Face, and tell him (as they do here) that he has Acted Illegally, doth certainly, ſufficiently prove the matter to be Libellous. What do they ſay to King, they ſay, and admit, that they have an averſneſs for the Declaration, and they tell him from whence that averſneſs doth proceed; and yet they inſinuate, that they had an inclination to Gratify the King, and Embrace the Diſſenters, that were as averſe to them, as could be, with due tenderneſs, when it ſhould be ſettled by Parliament and Convocation, Pray, what hath their Convocation to do in this matter.

L. Ch. Juſt. Mr. Sollicitor General, I will not interrupt you; but, pray, come to the Buſineſs before us: Shew us that this is in diminution of the Kings Prerogative, or that the King ever had ſuch a Prerogative.

Mr. Sol. Gen. I will, my Lord; I am obſerving what it is they ſay in this Petition—— They tell the King it is inconſiſtent with their Honor, Prudence, and Conſcience, to do what he would have them to do; and if theſe things be not reflective upon the King and Government, I know not what is; this is not in a way of Judicature, poſſibly it might have been allowable to Petition. The King to put it into a courſe of Juſtice, whereby it may be Tryed; but, alas, there is no ſuch thing in this matter.

It is not their deſire to put it into any Method for Tryal, and ſo it comes in the Caſe *De Libellis Famoſis*; for by this way, they make themſelves Judges, which no Man by Law is permitted to do. My Lords, the Biſhops have gone out of the way, and all that they have offered does not come home to juſtify them; and therefore I take it under Favour, that we have made it a good Caſe for the King, we have proved what they have done, and whether this be Warrantable or not, is the Queſtion, Gentlemen, that you

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are to try. The whole Caſe appears upon Record; the Declaration, and Petition are ſet forth, and the Order of the King and Council. When the Verdict is brought in, they may move any thing what they pleaſe in arreſt of Judgment: They have had a great deal of Latitude, and taken a great deal of Liberty; But truly, I apprehend, not ſo very pertinently. But, I hope, we have made a good Caſe of it for the King, and that you, Gentlemen, will give us a Verdict.

Mr. Juſt. Holloway. Mr. Sollicitor, there is one thing I would feign be ſatisfied in; you ſay the Biſhops have no Power to Petition the King.

Mr. Soll. Gen. Not out of Parliament, Sir.

Mr. Juſt. Holloway. Pray give me leave, Sir; Then the King having made ſuch a Declaration of a General Toleration and Liberty of Conſcience, and afterwards he comes and requires the Biſhops to diſperſe this Declaration; this they ſay, out of a tenderneſs of Conſcience, they cannot do, becauſe they apprehend it contrary to Law, and contrary to their Function: What can they do, if they may not Petition?

Mr. Soll. Gen. I'll tell you what they ſhould have done, Sir. If they were commanded to do any thing againſt their Conſciences, they ſhould have acquieſced till the Meeting of the Parliament.

[*At which ſome People in the Court hiſſed.*]

Mr. Attorn. Gen. This is very fine, indeed; I hope the Court, and the Jury, will take notice of this Carriage.

Mr. Soll. Gen. My Lord, it is one thing for a Man to Submit to his Prince, if the King lay a Command upon him that he cannot Obey, and another thing to Affront him. If the King will impoſe upon a Man what he cannot do, he muſt acquieſce; But ſhall he come and fly in the Face of his Prince? Shall he ſay it is Illegal? And that the Prince acts againſt Prudence, Honor, or Conſcience? And throw Dirt in the King's Face? Sure that is not to be permitted; that is Libelling with a Witneſs.

L. Ch. Juſt. Truly, Mr. Sollicitor, I am of Opinion that the Biſhops might Petition the King, but this is not the right way of bringing it; I am not of that Mind, that they cannot Petition the King out of Parliament, but if they may Petition, yet they ought to have done it after another Manner: For if they may in this Reflective way Petition the King, I am ſure, it will make the Government very precarious.

Mr. Juſt. Powel. Mr. Sollicitor, it would have been too late to ſtay for a Parliament, for it was to have been Diſtributed by ſuch a time.

Mr. Soll. Gen. They might have lain under it, and ſubmitted.

Mr. Juſt. Powel. No, they would have run into Contempt of the King's Command, without Petitioning the King not to inſiſt upon it; and if they had Petitioned, and not have ſhewn the Reaſon why they could not Obey, it would have been looked upon as a piece of Sullenneſs, and that they would have been blamed for, as much on the other ſide.

Mr. Serj. Baldock. After ſo long a Debate I ſhall not trouble you long, moſt things that are to be ſaid have been ſaid, but I ſhall only ſay this in ſhort; I cannot deny, nor ſhall not, but that the Subject has a Right to Petition, but I ſhall affirm it alſo, he has a Duty to Obey; and, that in this Caſe, the Power of the King to Diſpenſe with Penal Laws in Matters Eccleſiaſtical is not a thing that is now in Queſtion, nor need we here have had theſe long Debates on both ſides: It may be perceived plainly, by the Proofs that have been read, that the Kings and Princes have thought themſelves that they had ſuch a Power, though, it may be, the Parliament thought they had not; and therefore the Declarations of the one, or the other, I ſhall not meddle with in this Caſe. That Power it ſelf which the King has, as King of this Realm, in Matters rather Eccleſiaſtical and Criminal than Matters of Property, may ſomewhat appear by what has been read before your Lordſhip; but all this will be nothing in our Caſe, neither has his Majeſty now depended ſo much upon this thing; the Declaration has been read to you; and what's there ſaid? The King there ſays, That for thoſe Reaſons he was ready to Suſpend thoſe Laws; And be they Suſpended? Yet, my Lord, with this too, That he refers it to, and hopes to make it ſecure by, a Parliament: So that there being this, it has not gone, I think, very far; and, it not having been touch'd here, it is not a point of Duty in my Lords the Biſhops, as Biſhops, that's here inquired into; Whether they ſhould have medled with this, or no, in this manner, is the Queſtion. That the King is Supreme over all of us, and has a particular Supremacy over them, as Supreme Ordinary, and Governor, and Moderator of the Church, is very plain; and, my Lord, it is as plain that in ſuch things as concern the Church, he has a particular Power to Command them; this is not unknown, but very frequent and

common in Matters Eccleſiaſtical, and Matters of State; It is not here a Queſtion now, whether theſe Declarations which they were Commanded to take Care of getting read, were Legal or not Legal; what Prudence there was, what Honour there was, what Conſcience there was, for their not reading it, is not the Queſtion neither: But the point was, the King as Supreme Ordinary of his Kingdom, to whom the Biſhops are Subject, does in Council Order; And what is it he Orders? Their ſending out and diſtributing his Declaration; they were concerned in no more than that, and it had been a very petty thing, a ſmall thing, to ſend out the King's Declaration to be read by the Clergy: All the Clergy were Ordered to read it, but my Lords the Biſhops were only Commanded to diſtribute it; this he might do by Virtue of his Power Eccleſiaſtical. And if this be not an Evil in it ſelf, and if it be not againſt the Word of God, certainly Obedience was due from my Lords the Biſhops; active Obedience was due from them to do ſo much as this; it was no Conſent of theirs, it was no Approbation of theirs, of what they read, that was Required. So that if they had read it, or another had read it, by the King's Order, eſpecially if that Order be Legal, they are bound to do it by Virtue of their Obedience, and not to Examine more.

And, my Lord, in this Petition, here they come to relieve, not only themſelves that were preſent, (for I ſpeak to the Preamble, as others before me have ſpoke to the Concluſion) but they do involve the reſt of the Biſhops that were abſent; for it is in behalf of Themſelves, and their Brethren, and all the Clergy of that Province. Now that all theſe ſhould joyn in the Petition, is a thing very uncertain; how does it conſtrue here, whether they were altogether, and Conſented to it, or how all their Minds could be ſo fully known, that they would be all involved in the Diſobedience to this Order of the King. Then, my Lord, What is the thing they are greatly averſe to? There are Two things required in the Order, The Biſhops required to Diſtribute the Declaration to the Inferior Clergy; and the Inferior Clergy are required to Read it. Then their averſeneſs muſt be to Diſtribute it, and the others to Read it, and ſo they will be involved; none of whom did ever appear to have Joyned in it. And then they give Reaſons for their averſeneſs; and it is true, Reaſons might have been given, and good Reaſons ſhould be given, why they would not do this in Duty to His Majeſty; more gentle Reaſons, and other kind of Reaſons, than thoſe that they have given.

L. Ch. Juſt. Pray, Brother, will you come to the Matter before us.

Mr. Serj. Baldock. I have almoſt done, my Lord.

Mr. Juſt. Powel. The Information is not for Diſobedience, Brother, but for a Libel.

Mr. Serj. Baldock. No, Sir, it is not for Diſobedience, but it is for giving Reaſons for the Diſobedience in a Libellous Petition; and I am going on to that. The Declaration is ſaid in the Petition to be Illegal, which is a Charge upon the King, That he has done an Illegal Act. They ſay, they cannot in Honor, Conſcience, or Prudence do it; which is a Reflection upon the Prudence, Juſtice, and Honour of the King in Commanding them to do ſuch a thing: And this appearing to have been delivered to the King by my Lords the Biſhops; Perſons, to whom certainly we all owe a Deference, as our Spiritual Maſters, to believe what things they ſay, as moſt likely to be true; and, therefore it having an Univerſal Influence upon all the People, I ſhall leave it here to your Lordſhip, and the Jury, whether they ought not to Anſwer for it.

Mr. Recorder. Will your Lordſhip pleaſe to ſpare me one Word?

L. Ch. Juſt. I hope, we ſhall have done by and by.

Mr. Recorder. If your Lordſhip don't think fit, I can ſit down.

L. Ch. Juſt. No, no, go on, Sir *Barth. Shore*, you'll ſay I have ſpoiled a good Speech.

Mr. Recorder. I have no good one to make, my Lord, I have but a very few Words to ſay.

L. Ch. Juſt. Well, go on Sir.

Mr. Recorder. That which I would urge, my Lord, is only this; I think, my Lord, we have Proved one Information, and that they have made no Anſwer to it; for the Anſwer they have made, is but Argumentative, and taken either from the Perſons of the Defendants, as Peers, or from the Form of its being a Petition: As Peers, it is ſaid, they have a Right to Petition to, and Adviſe the King; but that is no Excuſe at all, for if it contains Matter Reproachful, or Scandalous, it is a Libel in Them, as well as in any other Subject; and they have no more Right to Libel the King than His Majeſties other Subjects have; nor will the Priviledge of their Peerage exempt them from being Puniſhed. And for the Form of this Paper, as being a Petition, there is no more Excuſe in that neither. For every Man has as much Right to Publiſh a Book, or Pamphlet, as they had to Preſent their Petition. And as it would be Puniſhable in that Man to Write a Scandalous

dalous Book, ſo it would be Puniſhable in them to make a Scandalous, and a Libellous Petition. And the Author of *Julian the Apoſtate*, becauſe he was a Clergy Man, and a Learned Man too, had as much Right to Publiſh his Book, as my Lords the Biſhops had to Deliver this Libel to the King. And if the City of *London* were ſo ſeverely Puniſhed, as to loſe their Charter, for Petitioning for the Sitting of a Parliament, in which there were Reflecting Words, but more Soft. ———

Mr. Juſt. Holloway. Pray, good Mr. Recorder, don't compair the Writing of a Book to the Making of a Petition; for it's the Birth-right of the Subject to Petition.

Mr. Recorder. My Lord, it was as Lawful for the City of *London* to Petition for the Sitting of a Parliament, as it was for my Lords the Biſhops to give Reaſons for their Diſobedience to the King's Command: And if the Matter of the City of *Londons* Petition was reckoned to be Libellous, in ſaying that what the King had done in Diſſolving the Parliament, was an Obſtruction of Juſtice, what other Conſtruction can be made of my Lords the Biſhops ſaying that the King's Declaration is Illegal? And if the Matter of this Petition be of the ſame Nature with that of the City of *London*, your Lordſhip can make no other Judgment of it; but that it ought to have the ſame Condemnation.

Mr. Juſt. Powel. Mr. Recorder, you will as ſoon bring the Two Poles together, as make this Petition to agree with *Johnſon's* Book; they are no more alike, than the moſt different things you can name.

Mr. Serj. Trinder. My Lord, I have but one Word.

L. Ch. Juſt. How unreaſonable is this now, that we muſt have ſo many Speeches at this time of Day? But we muſt hear it; go on Brother.

Mr. Serj. Trinder. My Lord, if your Lordſhip pleaſes, That which they ſeem moſt to inſiſt upon on the other ſide, and which has not been much ſpoken to on our ſide, is, That this Power which His Majeſty has Exerted, in ſetting forth His Declaration, was Illegal, and their Arguments were Hypothetical; If it were Illegal, they had not Offended; and they offered at ſome Arguments to prove it illegal: But as to that, my Lord, we need not go much further, than a Caſe that is very well known here, which I crave leave to mention, only becauſe the Jury, perhaps, have not heard of it; and that was the Caſe of Sir *Edward Hales*, where after a long Debate, it was Reſolved, That the King had a Power to Diſpenſe with *Penal Laws*.

But, my Lord, if I ſhould go higher into our Books of Law, that which they ſeem to make ſo ſtrange of, might eaſily be made appear, to have been a frequent and conſtant practice. ———

L. Ch. Juſt. That is quite out of the Caſe, Brother.

Mr. Serj. Trinder. I beg your Lorſhips Favour, for a Word or two; if your Lordſhip pleaſe to Conſider the Power the King has, as Supreme Ordinary, we ſay, he has a Power to Diſpenſe with theſe Statutes, as he is King, and to give Eaſe to his Subjects, as Supreme Ordinary of the whole Kingdom, and as having Supreme Eccleſiaſtical Authority throughout the Kingdom. There might be abundance of Caſes cited for this, if there were need; the Statute of *primo Eliz.* doubtleſs is in Force at this time, and a great many of the Statutes that have been made ſince that time, have expreſs Savings of the King's Supremacy; ſo that the King's Power is Unqueſtionable: And if they have come and Queſtioned this Power in this manner, by referring themſelves to the Declarations in Parliament, they have done that, which of late Days has been always look'd upon as an Ill thing, as if the King's Authority was under the Suffrages of a Parliament. But when they come to make out their Parliament Declarations, there was never a one, unleſs it be firſt in *Richard* the Seconds time, that can properly be called a Parliament Declaration; ſo that that of the ſeveral Parliaments is a Matter perfectly miſtaken; and if they have miſtaken it, it is in the Nature of falſe News, which is a Crime, for which the Law will Puniſh them. More things might be added, but I conſider your Lordſhip has had a great deal of Patience already, and much time has been ſpent, and, therefore I ſhall conclude, begging your Lordſhips Pardon for what I have ſaid.

L. Ch. Juſt. I do aſſure you, if it had not been a Caſe of great Concern, I would not have heard you ſo long: It is a Caſe of very great Concern to the King; and the Government, on the one ſide, and to my Lords the Biſhops on the other; and I have taken all the Care I can to obſerve what has been ſaid on both ſides. 'Tis not to be expected that I ſhould repeat all the Speeches, or the particular Facts, but I will put the Jury in mind of the moſt Material things, as well as my Memory will give me leave; but I have been interrupted by ſo many Long, and Learned Speeches, and by

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the length of the Evidence which has been brought in, in a very broken, unmethodical way, that I ſhall not be able to do ſo well as I would.

Gentlemen, thus ſtands the Caſe; It is an Information againſt my Lords the Biſhops, his Grace my Lord of *Canterbury*, and the other Six Noble Lords; and it is for Preferring, Compoſing, Making, and Publiſhing, and Cauſing to be Publiſhed, a Seditious Libel; the way that the Information goes is ſpecial, and it ſets forth, That the King was Graciouſly pleaſed, by his Royal Power and Prerogative, to ſet forth a Declaration of Indulgence for Liberty of Conſcience, in the Third Year of his Reign; and afterwards upon the 27. of *April*, in the Fourth Year, he comes and makes another Declaration; and afterwards, in *May*, orders in Council that this Declaration ſhould be Publiſhed by my Lords the Biſhops in their ſeveral Dioceſſes; and after this was done, my Lords the Biſhops come and preſent a Petition to the King, in which were contained the Words which you have ſeen.

Now, Gentlemen, the Proofs that have been upon this, you'll ſee what they are; the two Declarations are proved by the Clerks of the Council, and they are brought here under the Great Seal; a Queſtion did ariſe, whether the Prints were the ſame with the Original Declarations, and that is proved by *Hills*, or his Man, that they were Examined, and are the ſame; then the Order of Council was produced by Sir *John Nicholas*, and has likewiſe been read to you; then they come to prove the Fact againſt the Biſhops, and firſt they fall to proving their Hands; they begun indeed a great way off, and did not come ſo cloſe to it as they afterwards did; for ſome of their Hands they could hardly prove, but my Lord Archbiſhop's Hand was only proved, and ſome others, but there might have been ſome Queſtion about that Proof; but afterwards it came to be proved, that my Lords the Biſhops owned their Hands, which, if they had produced at firſt, would have made the Cauſe ſomething ſhorter than it was.

The next Queſtion that did ariſe, was about the Publiſhing of it, whether my Lords the Biſhops had Publiſhed it, and it was inſiſted upon, That no body could prove the Delivery of it to the King; it was proved, the King gave it to the Council, and my Lords the Biſhops were called in, and there they acknowledged their Hands; but no body could prove how it came to the King's Hands. Upon which, we were all of Opinion, That it was not ſuch a Publiſhing, as was within the Information; and I was going to have directed you to find my Lords the Biſhops Not Guilty: But it hapned, that being Interrupted in my Directions, by an Honeſt, Worthy, Learned Gentleman, the Kings Council took the Advantage, and informing the Court that they had further Evidence for the King, we ſtaid till my Lord Preſident came, who told us how the Biſhops came to him to his Office at *White-hall*, and after they had told him their Deſign, That they had a mind to Petition the King, they asked him the Method they were to take for it, and deſired him to help them to the Speech of the King: And he tells them he will acquaint the King with their Deſire, which he does; and the King giving leave, he comes down and tells the Biſhops, that they might go and ſpeak with the King when they would; and (ſays he) I have given Direction that the Door ſhall be opened for you, as ſoon as you come. With that the Two Biſhops went away, and ſaid, they would go and fetch their other Brethren, and ſo they did bring the other Four, but my Lord Archbiſhop was not there; and immediately when they came back, they went up into the Chamber, and there a Petition was Delivered to the King. He cannot ſpeak to that particular Petition, becauſe he did not Read it, and that is all that he knew of the Matter; only it was all done the ſame Day, and that was before my Lords the Biſhops appeared at the Council.

Gentlemen, after this was proved, then the Defendants came to their Part; and theſe Gentlemen that were of Councel for my Lords let themſelves into their Defence, by notable Learned Speeches, by telling you that my Lords the Biſhops are Guardians to the Church, and great Peers of the Realm, and were bound in Conſcience to take care of the Church. They have Read you a Clauſe of a Statute, made in Queen *Eliz.* time, by which they ſay, my Lords the Biſhops were under a Curſe, if they did not take care of that Law. Then they ſhew you ſome Records; One in *Richard* the Seconds time, which they could make little of, by reaſon their Witneſs could not Read it; but it was in ſhort, a Liberty given to the King, to Diſpenſe with the Statute of Proviſors. Then they ſhew you ſome Journals of Parliament; Firſt in the Year 1662. where the King had Granted an Indulgence; and the Houſe of Commons Declared it was not fit to be done, unleſs it were by Act of Parliament. And they Read the King's Speech, wherein he ſays, he wiſh'd he had ſuch a Power, and ſo likewiſe that in 1672.

which

which is all nothing, but Addreſſes and Votes, or Orders of the Houſe, or Diſcourſes, either the King's Speech, or the Subjects Addreſſes; but theſe are not Declarations in Parliament that is inſiſted upon by the Councel for the King, That what is a Declaration in Parliament is a Law, and that muſt be by the King, Lords, and Commons; the other is but common Diſcourſe, but a Vote of the Houſe, or a Signification of their Opinion, and cannot be ſaid to be a Declaration in Parliament: Then they come to that in 1685. where the Commons take notice of ſomething about the Souldiers in the Army that had not taken the Teſt, and make an Addreſs to the King about it; but in all theſe things (as far as I can obſerve) nothing can be gathered out of them, one way or other, it is all nothing but Diſcourſes. Sometimes this Diſpenſing Power has been allowed, as in *Ric.* 2. time; and ſometimes it has been denied, and the King did once wave it; Mr. Sollicitor tells you the Reaſon, There was a Lump of Money in the Caſe: But I wonder indeed to hear it come from him.

Mr. Soll. Gen. My Lord, I never gave my Vote for Money, I aſſure you.

L. Ch. Juſt. But thoſe Conceſſions which the King ſometimes makes for the Good of the People, and ſometimes for the Profit of the Prince himſelf; (but I would not be thought to diſtinguiſh between the Profit of the Prince, and the Good of the People, for they are both one; and what is the Profit of the Prince is always for the Good of the People;) but I ſay, thoſe Conceſſions muſt not be made Law, for that is reſerved in the King's Breaſt, to do what he pleaſes in it at any time.

The truth of it is, the Diſpenſing Power is out of the Caſe, it is only a Word uſed in the Petition; but truly I will not take upon me to give my Opinion in the Queſtion, to determine that now, for it is not before me: The only Queſtion before me is, and ſo it is before you, Gentlemen, it being a Queſtion of Fact, Whether here be a certain Proof of a Publication? And then the next Queſtion is a Queſtion of Law indeed, Whether if there be a Publication proved, it be a Libel?

Gentlemen, upon the point of the Publication, I have ſummed up all the Evidence to you; and if you believe, that the Petition which theſe Lords preſented to the King was this Petition, truly, I think, that is a Publication ſufficient; if you do not believe it was this Petition, then my Lords the Biſhops are not Guilty of what is laid to their Charge in this Information, and conſequently there needs no Inquiry whether they are Guilty of a Libel: But if you do believe, that this was the Petition they preſented to the King, then we muſt come to Inquire whether this be a Libel.

Now, Gentlemen, any thing that ſhall diſturb the Government, or make Miſchief and a Stir among the People, is certainly within the Caſe of *Libellis Famoſis*; and I muſt in ſhort give you my Opinion, I do take it to be a Libel. Now, this being a point of Law, if my Brothers have any thing to ſay to it, I ſuppoſe they will deliver their Opinions.

Mr. Juſt. Holloway. Look you, Gentlemen, it is not uſual for any Perſon to ſay any thing after the Chief Juſtice has ſummed up the Evidence, it is not according to the Courſe of the Court; but this is a Caſe of an Extraordinary Nature, and there being a point of Law in it, it is fit every body ſhould deliver their own Opinion: The Queſtion is, whether this Petition of my Lords the Biſhops be a Libel, or no; Gentlemen, the End and Intention of every Action is to be Conſidered, and likewiſe, in this Caſe, we are to Conſider the Nature of the Offence that theſe Noble Perſons are Charged with; it is for delivering a Petition, which, according as they have made their Defence, was with all the Humility and Decency that could be: So that if there was ill Intent, and they were not (as it is nor can be pretended they were) Men of Evil Lives, or the like, to deliver a Petition cannot be a Fault, it being the Right of every Subject to Petition: If you are ſatisfied there was an ill Intention of Sedition, or the like, you ought to find them Guilty; but if there be nothing in the Caſe that you find, but only that they did deliver a Petition to ſave themſelves harmleſs, and to free themſelves from blame, by ſhewing the Reaſon of their Diſobedience to the King's Command, which they apprehended to be a Grievance to them, and which they could not in Conſcience give Obedience to; I cannot think it is a Libel: It is left to you, Gentlemen, but that is my Opinion.

L. Ch. Juſt. Look you, by the way, Brother, I did not ask you to ſum up the Evidence, (for that is not uſual) but only to deliver your Opinion, whether it be a Libel, or no.

Mr. Juſt. Powel. Truly, I cannot ſee, for my part, any thing of Sedition, or any other Crime, fixed upon theſe Reverend Fathers, my Lords the Biſhops.

For, Gentlemen, to make it a Libel it muſt be Falſe, it muſt be Malicious, and it muſt tend to Sedition; as to the Falſhood, I ſee nothing that is offered by the King's Councel, nor any thing as to the Malice: It was preferred with all the Humility and Decency that became the King's Subjects to approach their Prince with.

Now, Gentlemen, the Matter of it is before you; you are to Conſider of it, and it is worth your Conſideration, they tell his Majeſty, It is not out of averſneſs to pay all due Obedience to the King, nor out of a want of tenderneſs to their diſſenting Fellow Subjects, that made them not perform the Command impoſed upon them; but they ſay, That becauſe they do conceive, that the thing that was Commanded them was againſt the Law of the Land, therefore they do deſire his Majeſty, that he would be pleaſed to forbear to inſiſt upon it, that they ſhould perform that Command which they take to be Illegal.

Gentlemen, we muſt Conſider what they ſay is Illegall in it; they ſay, they apprehend the Declaration is Illegal, becauſe it is founded upon a Diſpenſing Power, which the King claims, to Diſpenſe with the Laws concerning Eccleſiaſtical Affairs.

Gentlemen, I do not remember in any Caſe in all our Law, and I have taken ſome Pains upon this Occaſion to look into it, that there is any ſuch Power in the King, and the Caſe muſt turn upon that, in ſhort; If there be no ſuch Diſpenſing Power in the King, then that can be no Libel which they preſented to the King, which ſays, that the Declaration, being founded upon ſuch a pretended Power, is Illegal.

Now, Gentlemen, this is a Diſpenſation with a Witneſs, it amounts to an Abrogation and utter Repeal of all the Laws; for I can ſee no difference, nor know of none in Law, between the King's Power to Diſpenſe with Laws Eccleſiaſtical, and his Power to Diſpenſe with any other Laws whatſoever: If this be once allowed of, there will need no Parliament, all the Legiſlature will be in the King, which is a thing worth Conſidering, and I leave the Iſſue to God and your Conſciences.

Mr. Juſt. Allybone. The ſingle Queſtion that falls to my ſhare, is, to give my Senſe of this Petition, whether it ſhall be in Conſtruction of Law a Libel in it ſelf, or a thing of great Innocence; I ſhall endeavour to expreſs my ſelf in as plain Terms as I can, and as much as I can, by way of Propoſition.

And, I think, in the firſt place, That no Man can take upon him to write againſt the actual Exerciſe of the Government, unleſs he have leave from the Government, but he makes a Libel, be what he writes true or falſe; for if once we come to impeach the Government by way of Argument, 'tis the Argument that makes it the Government, or not the Government: So that I lay down that in the firſt place, That the Government ought not to be impeached by Argument, nor the Exerciſe of the Government ſhaken by Argument; becauſe I can manage a Propoſition in it ſelf doubtful, with a better Pen than another Man: This, ſay I, is a Libel.

Then I lay down this for my next Poſition, That no private Man can take upon him to write concerning the Government at all; for what has any private Man to do with the Government, if his Intereſt be not ſtirred or ſhaken? It is the buſineſs of the Government to manage Matters relating to the Government; it is the buſineſs of Subjects to mind only their own Properties and Intereſt: If my Intereſt is not ſhaken, what have I to do with Matters of Government? They are not within my Sphere: If the Government does come to ſhake my particular Intereſt, the Law is open for me, and I may redreſs my ſelf by Law: And when I intrude my ſelf into other Mens buſineſs, that does not concern my particular Intereſt, I am a Libeller.

Theſe I have laid down for plain Propoſitions; now then let us Conſider further, Whether if I will take upon me to contradict the Government, any ſpecious Pretence that I ſhall put upon it ſhall dreſs it up into another Form, and give it a better Denomination; and truly I think it will not, I think 'tis the worſe, becauſe it comes in a better Dreſs; for by that Rule, every Man that can put on a good Vizard, may be as Miſchievous as he will to the Government at the bottom; ſo that whether it be in the form of a Supplication, or an Addreſs, or a Petition, if it be what it ought not to be, let us call it by its true Name, and give it its right Denomination, It is a Libel.

Then, Gentlemen, Conſider what this Petition is; This is a Petition relating to ſomething that was done and ordered by the Government. Whether the Reaſons of the Petition be true or falſe, I will not Examine that now, nor will I Examine the Prerogative of the Crown, but only take notice that this relates to the Act of the Government: The Government here has publiſhed ſuch a Declaration as this, that has been read, relating to Matters of Government; And ſhall, or ought, any body to come

come and impeach that as Illegal, which the Government has done? Truly, in my Opinion, I do not think he ſhould, or ought; for by this Rule may every Act of the Government be ſhaken, when there is not a Parliament *de Facto* ſitting.

I do agree, That every Man may Petition the Government, or the King, in a matter that relates to his own private Intereſt; but to meddle with a matter that relates to the Government, I do not think my Lords the Biſhops had any Power to do more than any others: When the Houſe of Lords and Commons are in Being, it is a proper way of applying to the King, there is all the openneſs in the World, for thoſe that are Members of Parliament, to make what Addreſſes they pleaſe to the Government, for the rectifying, altering, regulating, and making of what Law they pleaſe; but if every private Man ſhall come and interpoſe his Advice, I think, there can never be an end of Adviſing the Government; I think, there was as an inſtance of this in King *James*'s Time, when by a Solemn Reſolution it was declared to be High Miſdemeanour, and next to Treaſon, to Petition the King to put the Penal Laws in Execution.

Mr. Juſt. Powel. Brother, I think, you do Miſtake a little.

Mr. Juſt. Allybone. Brother, I dare rely upon it, that I am Right; it was ſo declared, by all the Judges.

Mr. Soll. Gen. The Puritans preſented a Petition to that purpoſe, and in it they ſaid, if it would not be granted, they would come with a Great Number.

Mr. Juſt. Powel. Ay, there it is.

Mr. Juſt. Allybone. I tell you, Mr. Sollicitor, the Reſolution of the Judges is, That ſuch a Petition is next Door to Treaſon, a very Great Miſdemeanour.

Mr. Juſt. Powel. They accompanying it with Threats of the Peoples being Diſcontented.

Mr. Juſt. Allybone. As I remember, it is in the Second Part of the Folio 35, or 37, where the Reſolution of the Judges is, That to frame a Petition to the King, to put the Penal Laws in Execution, is next Door to Treaſon; for (ſay they) no Man ought to intermeddle with Matters of Government without leave of the Government.

Mr. Serj. Pemberton. That was a Petition againſt the Penal Laws.

Mr. Juſt. Allybone. Then I am quite Miſtaken indeed, in caſe it be ſo.

Mr. Serj. Trinder. That is not Material at all, which it was.

Mr. Pollixfen. They there threatned, unleſs their Requeſt were granted, ſeveral Thouſands of the King's Subjects would be Diſcontented.

Mr. Juſt. Powel. That is the Reaſon of that Judgment, I affirm it.

Mr. Juſt. Allybone. But then I'll tell you, Brother, again, what is ſaid in that Caſe that you hinted at, and put Mr. Sollicitor in mind of; For any Man to raiſe a Report that the King will, or will not, permit a Toleration, if either of theſe be diſagreeable to the People, whether he may, or may not, It is againſt Law; for we are not to meaſure things from any Truth they have in themſelves, but from that Aſpect they have upon the Government; for there may be every Tittle of a Libel true, and yet it may be a Libel ſtill: So that I put no great Streſs upon that Objection, That the Matter of it is not Falſe; and, for Sedition, it is that which every Libel carries in it ſelf; and as every Treſpaſs implies *Vi & Armis*, ſo every Libel againſt the Government carries in it Sedition, and all the other Epithets that are in the Information; This is my Opinion as to the Law in General.

I will not Debate the Prerogatives of the King, nor the Priviledges of the Subject; but as this Fact is, I think, theſe Venerable Biſhops did meddle with that which did not belong to them; they took upon them, in a Petitionary way, to contradict the Actual Exerciſe of the Government, which, I think, no private, particular Perſons, or ſingle Body, may do.

L. Ch. Juſt. Gentlemen of the Jury, Have you a Mind to Drink before you go?

Jury. Yes, my Lord, if you pleaſe.

[*Wine was ſent for, for the Jury.*]

Jury-man. My Lord, we humbly pray, that your Lordſhip would be pleaſed to let us have the Papers that have been given in Evidence.

L. Ch. Juſt. What is that you would have, Sir?

Mr. Soll. Gen. He deſires this, my Lord, That you would be pleaſed to direct that the Jury may have the uſe of ſuch Writings, and Statute Books, as may be Neceſſary for them to make uſe of.

L. Ch. Juſt. The Statute Book they ſhall have.

Mr. Soll. Gen. But they can have no Papers, but what are under Seal.

Mr. Serj.

Mr. Serj. Levinz. They may have them by Conſent, and they may have a Copy of the Information.

L. Ch. Juſt. They ſhall have a Copy of the Information, and the Declarations under Seal.

Mr. Pollixfen. If they have thoſe, and the Libel, (as they call it) they will not need a Copy of the Information.

M. Attorn. Gen. My Lord, we pray that your Lordſhip would be pleaſed to aſcertain what it is they ſhall have.

L. Ch. Juſt. They ſhall have a Copy of the Information, the Libel, and the Declarations under the Great Seal.

Mr. Soll. Gen. But not the Votes of the Houſe of Commons, nor the Journals, for they are not Evidence.

L. Ch. Juſt. No, I don't intend they ſhall.

Sir Rob. Sawyer. My Lord, we pray they may have the whole Petition.

Mr. Juſt. Holloway. That is, with the Direction, and Prayer, you mean.

Mr. Attorn. Gen. Yes, with all our Hearts.

[*Then the Court aroſe, and the Jury went together to Conſider of their Verdict, and ſtayed together all Night, without Fire or Candle.*]

On Saturday the 30th. Day of June, Anno Dom. 1688. *about Ten of the Clock in the Morning, the Archbiſhop, and the reſt of the Biſhops, came again into the Court, and immediately after the Jury were brought to the Bar.*

Sir Sam. Aſtry. Cryer, Take the Appearance of the Jury. Sir *Roger Langley.*

Sir Rog. Langley. Here.

Cryer. Vous avez, &c. [*And ſo all the reſt were called, and anſwered.*]

Then Proclamation for Silence was made.

Sir. Sam. Aſtry. Gentlemen, are you agreed on your Verdict?

Jury. Yes.

Sir Sam. Aſtry. Who ſhall ſay for you?

Jury. Foreman.

Sir Sam. Aſtry. Do you find the Defendants, or any of them, Guilty of the Miſdemeanour whereof they are Impeached, or not Guilty?

Foreman. *NOT GUILTY.*

Sir Sam. Aſtry. Then hearken to your Verdict, as the Court hath Recorded it—— You ſay, the Defendants, and every of them, are *NOT GUILTY* of the Miſdemeanour whereof they are Impeached; and ſo you ſay all?

Jury. Yes.

[*At which there were ſeveral great Shouts in the Court, and throughout the Hall.*]

Mr. Sollicitor General, taking Notice of ſome Perſons in Court that Shouted, moved very earneſtly that they might be committed; whereupon a Gentleman of Grays Inn *was laid hold on, but was ſoon after Diſcharged. And after the Shouting was over, the Lord Chief Juſtice reproving the Gentleman, ſaid,*

L. Ch. Juſt. Sir, I am as glad as you can be, that my Lords the Biſhops are acquitted; but your Manner of rejoycing here in Court is Indecent, you might rejoyce in your Chamber, or elſewhere, and not here.

[*Then ſpeaking to Mr. Attorney, he ſaid,*]

Have you any thing more to ſay to my Lords the Biſhops, Mr. Attorney?

Mr. Attorn. Gen. No, my Lord.

[*Then the Court aroſe, and the Biſhops went away.*]

F I N I S.

A D V E R T I S E M E N T.

There will be ſhortly Publiſhed Poems on ſeveral Occaſions. By *Charles Cotton*, Eſq; Printed for *T. Baſſet*, *W. Henſman*, and *T. Fox.*